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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-707

THE SCHOOL BOARD
OF THE CITY OF DANVILLE, VIRGINIA, ET AL,
Petitioners,

v.

CHARLES L. MEDLEY, AN INFANT, BY
GRACIE MEDLEY HAIRSTON AND LEROY HAIRSTON,
HIS MOTHER AND STEPFATHER AND NEXT FRIENDS, ET AL,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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THE SCHOOL BOARD
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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioners, The School Board of the City of Danville, and Zane E. Eargle, Superintendent of Schools (hereinafter referred to as the Danville School Board), pray that a Writ of Certiorari issue to review the judgments of the United States Court of Appeals for the Fourth Circuit, entered in the cases of *Charles L. Medley, an infant, by Gracie Medley Hairston and LeRoy Hairston, his mother and stepfather and next friends, et al., Appellants* v. *The School Board of the City of Danville, Virginia, et al., Appellees,* No. 72-2373 and *Charles L. Medley, an infant, by Gracie Medley Hairston and LeRoy Hairston, his mother and stepfather and*

next friends, et al., Appellees v. *The School Board of the City of Danville, Virginia, et al., Appellants,* No. 72-2374.

OPINIONS BELOW

The opinions of the Courts below preceding this Petition are as follows:

1. Opinion dated August 22, 1972, reported at 350 F. Supp. 34 (directing establishment of fifth and sixth grade centers) (appendix hereto 1a).[1]

2. Order dated August 22, 1972, unreported (directing the implementation of the plan outlined in the opinion of the same date) (33a).

3. Order of the District Court, dated August 28, 1972, unreported, (granting delay for filing of detailed plan for implementation of plan) (35a).

4. Order dated August 28, 1972, unreported, (overruling motions for rehearing and to vacate, alter or amend judgment) (37a).

5. Order dated October 4, 1972, unreported (approving plans for implementation of opinion and charts filed therewith) (39a).

6. Memorandum, opinion and order dated October 24, 1972, reported at 350 F. Supp. 34, 53 (granting motion for stay) (43a).

7. Opinions of the Court of Appeals dated August 3, 1973, unreported, (reversing the District Court) (52a).

8. Judgments of the Court of Appeals dated August 3, 1973, unreported (62a and 63a).

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[1] The appendix of opinions below is printed in a separate volume because of its length.

9. Order of the Court of Appeals dated August 14, 1973, unreported, (denying motion that mandate issue forthwith) (64a).

10. Order of the Court of Appeals dated September 12, 1973 (denying petition for rehearing *in banc*) (65a).

11. Order of the Court of Appeals dated October 11, 1973, unreported, (denying motion for stay of mandate) (66a).

GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED

The judgments of the United States Court of Appeals sought to be reviewed was entered on August 3, 1973. The Petition for Rehearing *In Banc* was denied on September 12, 1973. Jurisdiction to review the judgments in question by Writ of Certiorari is conferred on the Supreme Court of the United States by 28 U.S.C. § 1254.

QUESTIONS PRESENTED

1. Where the Danville School Board had, voluntarily and prior to the bringing of any action against it, accomplished perfect racial balance at the high school level, near racial balance in the junior high schools, at least twenty percent white students in each of the elementary schools, equality of facilities, complete integration of faculty and administrative staffs, and no discrimination in extra-curricular activities, were the Courts below in error in failing to hold the system unitary?

2. Did the Circuit Court err in reversing the District Court's finding that the system would be unitary with improvements in the fifth and sixth grades?

CONSTITUTIONAL PROVISION INVOLVED

This case involves Section 1 of the Fourteenth Amendment to the Constitution of the United States, which provides as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

The statement of the case will be divided into subject matters.

Geography and Demography

The City of Danville is located in southern Virginia and is divided by the Dan River. For many years, a substantial portion of the black population of Danville has been concentrated on the south side of the Dan River within a "horseshoe" formed by the river. Since World War II, three federally funded housing projects have been built within or near the "horseshoe". These projects have attracted large numbers of black families and have increased the concentration of black students in that area of the city. (350 F. Supp. at 43-44, 14a).

History of the Danville System

The assignment of students in the Danville School system has traditionally been based upon geographical location.

The Danville School Board does not operate a bus system and elementary students have not crossed the Dan River unless there were some exceptional circumstances. The schools in the Danville system, except the Bonner Junior High School, were built according to population demands, Bonner was located to aid in desegregation.

Black students were admitted to formerly all white schools in Danville in 1963. In 1965, a freedom of choice plan was adopted, and implementation of that plan was completed during the 1966-67 school year. (350 F. Supp at 41, 8a).

In 1965, a Head Start program was initiated, and in 1967 an ESEA Title I summer project was instituted. Pupils and teachers were assigned on a non-discriminatory basis in these programs. (350 F. Supp. 39, 5a).

In 1968, the Danville School Board submitted, and in 1969 the Department of Health, Education and Welfare (hereinafter referred to as HEW) approved, a plan which provided for geographical zoning of five elementary schools and expansion of faculty integration. At the suggestion of HEW this plan was modified in 1970. Under the plan as modified all elementary schools were zoned and some were paired. Following the implementation of this plan, a team consisting of members of the Staff of Region III, Office of Civil Rights (HEW) visited Danville and found the implementation of the plan to be satisfactory. As a result, Dr. Eloise Severinson, Director, Region III, Office of Civil Rights, informed the Superintendent of the Danville schools that:

> "... it thus appears that you have carried out the provision of the desegregation plan for 1970 ... We appreciate the leadership shown by you and your school board."

(350 F. Supp. at 41, 8a-9a).

However, in July of 1971, Dr Severinson informed the Superintendent that in view of the *Swann* decision the plan for the Danville schools should be reviewed. In response the Danville School Board altered the attendance area of the Woodberry Hill Elementary Schools, and on July 29, 1971, Dr. Severinson suggested additional changes. (350 F. Supp. at 41, 9a-10a).

Proceedings in the Courts Below

On July 30, 1971, probably before the letter of HEW, dated July 29, 1971, was received, this suit was filed in the United States District Court for the Western District of Virginia, Danville Division, by Charles L. Medley, et al, against the Danville School Board. (350 F. Supp. at 41, 10a). Jurisdiction was invoked under 28 U.S.C. §§ 1331 and 1343 and under 42 U.S.C. §§ 1981 and 1983. On June 8, 1972, Judge H. Emory Widener, Jr., of the United States District Court for the Western District of Virginia, directed the Danville School Board to seek assistance from HEW in improving the present plan, but HEW did not reply to the request. (350 F. Supp. at 41, 10a).

Following several hearings held by the Court with counsel and experts from the school system and School Board, it was agreed that the case would be submitted on the basis of the admissions of record and stipulations of fact with the understanding that counsel could submit additional evidence. (350 F. Supp. at 36, 1a). The defendants filed several affidavits, and the matter was submitted to the Court by brief. It was agreed that grades seven through twelve were desegregated and that there was desegregation as to faculty and administration throughout the system. (350 F. Supp. at 39-40, 5a-7a).

On August 22, 1972, the District Court rendered its opinion and ordered the creation of fifth and sixth grade centers for the children on each side of the river but otherwise held the Board had completely desegregated the system. The Court declined, because of safety considerations, to adopt a plan which would require elementary school students to cross the Dan River. The Court found the problem created by the division of Danville by the Dan River was reinforced by dangers from heavy commerical development on both banks of the river and by Riverside Drive, Route 58, which runs roughly parallel to the north side of the river. The Court also found the five bridges across the river cannot be considered safe for pedestrian use because of heavy traffic, adjacent east-west thoroughfares or lack of walkways or abutting sidewalks. (350 F. Supp. 44-45, 49; 15a-17a, 24a).

Both the plaintiffs and defendants filed motions to alter or amend the judgment but both motions were overruled. In October, 1972, the District Court entered an order approving in part and modifying in part the School Board's plan for implementing the Court's order. The plaintiffs filed a notice of appeal on October 4, 1972, and the defendants subsequently filed a notice of cross-appeal. The District Court granted a stay pending appeal. (350 F. Supp. at 53-54, 57; 37a, 39a, 43a, 44a, 51a).

The United States Court of Appeals for the Fourth Circuit heard argument on the appeal and cross-appeal in March, 1973, and rendered its opinion on August 3, 1973. (52a). The Fourth Circuit upheld the decision of the District Court that further desegregation was required in Danville but held the District Court had given inadequate consideration to the use of bus transportation and split zoning. (52a).

A petition for rehearing *in banc* was denied on September 12, 1973, and the motion for stay of mandate was denied on October 11, 1973. (65a, 66a).

REASONS FOR GRANTING THE WRIT

Counsel for the Petitioners assert they do not believe this Court has been faced with a factual situation similar to the facts in this case. One which is similar has been decided with a contra result by the Circuit Court of Appeals for the Sixth Circuit. This is a case involving a school board which conscientiously attempted to comply with the constitutional duties as defined by the Federal courts. Only nine months before this action was filed, the Danville Board had been commended by HEW for its "leadership" in desegregation. Throughout the argument, counsel will attempt to show this Court that the School Board in this case voluntarily and *before any* action was filed against it had accomplished the following:

1. Complete integration of faculty in all schools.

2. Complete integration of administration.

3. No discrimination as to facilities.

4. No discrimination as to extracurricular activities.

5. Combined the former two high schools into one high school for all students resulting in perfect integration for high school students.

6. Built one junior high school and adjusted lines resulting in near racial balance in the junior high schools.

7. Adjusted school zones for elementary schools so that each elementary school had at least 21% white students.

This was accomplished despite the presence of three fed-

erally funded housing projects in an area that attracted black families.

The position of counsel is that the Danville School system is a unitary system when measured in the light of the decisions of this Court establishing:

1. That all current factors including racial composition of the student body, faculty integration, administrative integration, equality of facilities, equality of extracurricular activities and the community and administration attitudes must be considered in determining if there is a unitary system. *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 18 (1971). *Keyes* v. *School District No. 1, Denver, Colorado*, ... U.S. ...., 93 S. Ct. 2686, 2691 (1973).

2. That every school in a school system need not reflect the racial composition of the school district as a whole in order for the school district to be unitary. *Swann, supra* at 24.

The Decision Of The Court Of Appeals For The Fourth Circuit In The Case At Hand Is In Conflict With A Decision Of The Court Of Appeals For The Sixth Circuit In A Strikingly Similar Case.

The United States Court of Appeals for the Sixth Circuit has affirmed the decision of the District Court in *Goss* v. *Board of Education of Knoxville*, 340 F. Supp. 711 (E.D. Tenn. 1972); *aff'd*, Nos. 72-1766, 72-1767 (6th Cir. March 29, 1973) *aff'd in banc* (6th Cir. July 18, 1973) *petition for certiorari filed* No. 73-661 (October 16, 1973). These decisions reach a result contrary to the result in the case at hand in a strikingly parallel factual situation.

The Knoxville system had been held unitary in 1967. Another Court action was brought in 1969 and the system was again sustained. On appeal, the case was remanded for the District Court to consider the Supreme Court's mandate in *Swann* v. *Charlotte-Mecklenburg Board of Education, supra.* The District Court made exhaustive findings of facts on remand. It considered geographical features such as a river which divided the City. The traffic flow within the City, the location of the interstate highway, and other factors making transportation difficult were also discussed. Most importantly, the Court considered the residential housing patterns in great detail.

The plaintiffs advanced a plan which would provide for nearly the same percentage of black students in every school. They contended that since the Knoxville system was 16.5 percent black, every school should be between 10 percent and 30 percent black, but, as in the case at hand, the District Judge held their plan to be impractical (350 F. Supp. at 49; 24a).

The District Court held the system was unitary despite the fact that in the 1971-72 school year, sixteen of sixty-four schools were all white and several of the schools were nearly all black. The Court pointed out that *Swann* does not require a particular racial mixture in each school, and concluded that disproportionate racial mixtures in some of the schools of Knoxville were the result of residential segregation for which the School Board could not be held responsible.

On appeal to the Sixth Circuit, first a panel of Circuit Judges and then the Court *in banc* refused to set aside the findings of the District Court.

Your Petitioners respectfully contend that the apparent conflict between the Circuits in these cases raises serious questions which should be resolved by this Court.

This Case Presents Serious Questions Regarding The Definition Of A Unitary School System

In *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. at 24 (1971) this Court said:

> If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse. The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole.

If these words are to have any meaning at all, the Danville School system must be held unitary. When this suit was brought against the Danville School Board, the School Board was not operating a single all black school. There were no majority black secondary schools and *every elementary school pupil attended a school where the student population was at least twenty-one percent white.*[2] Thus, the current situation in Danville at the time the suit was brought was that the student body of every Danville school had been meaningfully desegregated *in good faith without any Court action.*[3]

This Court has repeatedly emphasized that other factors besides student ratios must be taken into account in deter-

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[2] The current situation is revealed by reference to charts showing 1970-1971 composition of schools, the suit having been brought within sixty days from the end of that school year and before the 1971 session.

[3] In *Keyes*, *supra* at 2693 this Court made it clear that the burden is on the plaintiffs to "prove that a current condition of segregated schooling exists within a school district where a dual system was compelled or authorized by statute at the time of our decision in *Brown* v. *Board of Education* . . ."

mining if a school system is still segregated. In *Swann* the Court said:

> "In *Green* we pointed out that existing policy and practice with regard to faculty, staff, transportation, extracurricular activities, and facilities were among the most important indicia of a segregated system."

Id., at 18. Similarly in *Keyes* v. *School District No. 1, Denver, Colorado,* ..... U.S. ....., 93 S. Ct. 2686, 2691 (1973) this Court said:

> "What is or is not a segregated school will necessarily depend on the facts of each particular case. In addition to the racial and ethnic composition of a school's student body, other factors such as the racial and ethnic composition of faculty and staff and the community and administration attitudes toward the school must be taken into consideration."

When these other factors are taken into account the unitary character of the Danville system becomes even more apparent. The District Court found that the faculty in each of the Danville schools was "assigned on an almost completely mathematically precise basis . . ." (350 F. Supp. at 39, 5a). The plaintiffs conceded that the administrative staff was desegregated. (350 F. Supp. at 40, 7a). The extracurricular activities in the schools were desegregated, and the plaintiffs have not contended otherwise. (350 F. Supp. at 39, 5a). Furthermore, this progressive School Board operates a fully desegregated Head Start program and summer school program. The Danville Board has not and does not operate a transportation system.

There is a further factor which should be considered in determining if the Danville system is unitary. That factor

is the attitude of the members of this School Board and their predecessors in office. With each interpretation of the constitutional mandate this School Board has moved to comply and made Court intervention unnecessary. Black students were admitted to formerly all white schools in Danville without a Court order ten years ago. With the advent of freedom of choice the School Board adopted a plan similar to that in *United States* v. *Jefferson County Board of Education,* 372 F.2d 836 (5th Cir. 1966), even before that decision was handed down. Such plans were approved in the Fourth Circuit until this Court's decision in *Green* v. *County School Board of New Kent,* 391 U.S. 430 (1968). *Bowman* v. *County School Board of Charles City County,* 382 F.2d 326 (4th Cir. 1967).

Immediately after the *Green* decision the Danville Board adopted a new plan which received HEW approval. This plan was modified to promote desegregation in 1970. The Board was commended by HEW for its "leadership" in taking these actions.

After the *Swann* decision and even after this suit was brought, the School Board continued to make changes in its plan to promote racial balance. But the Danville Board has rightly concluded that the language of *Swann* does not require a School Board which has already produced substantial integration in every one of its schools to engage in cross town busing at the expense of quality education and the abolition of neighborhood elementary schools. Thus, there is nothing in the history of this School Board which indicates that it is not morally committed to the principle of desegregation or that it will not continue to take affirmative action to produce meaningful desegregation.

The Court's attention is directed to the District Court's finding that with improvements in only the fifth and sixth

grade percentages, the last vestiges of segregation would be eliminated. By referring to the charts in the Appendix, pages 67a-85a, it may be seen that in the 1970-71 school year (which was the last year of operation before this suit was filed), there was a total of 1576 fifth and sixth grade students in the Danville system. Also, there were only two schools with a majority of black students in these two grades. Gibson was 73% black in the fifth grade (30 white and 79 black) and 78% black in the sixth grade (21 white and 75 black). Westmoreland was 70% black in the fifth grade (27 white and 78 black) and 67% black in the sixth grade (37 white and 73 black). If fifty-one white students could have been found in the Gibson-Westmoreland neighborhoods to replace fifty-one black students in the fifth grades in these schools and forty-five white students could have been found in the same neighborhood to replace forty-five black students in the sixth grade there would have been a majority of white students in the fifth and sixth grades in every school in Danville and under the District Court's holding the entire system would have been unitary. The issue which this Court should consider is the impact upon other school districts of this finding. How can it be said that because ninety-six white students were not available in these two school zones to replace ninety-six black students, that the system is not unitary? This is particularly true when there are 1576 students in the fifth and sixth grades and 9,800 in the whole school system. It is truly the tail wagging the dog when a 6.1% shift in two grades (or less than one percent of all students) would make a majority of white fifth and sixth graders in all schools and a system is condemned because those few replacements were not available.

The question may then be asked, why was not such a shift made. It is recognized that if 359 white elementary stu-

dents could be found to replace black students in the areas where the black students were a majority, that all 4882 elementary students would have been attending schools where white students were in the majority (See 1971-1972 figures in chart of District Court's judgment of August 22, 1972, replacing 115 black students at Gibson with white, 80 at Grove Park, 84 at Berkeley and 80 at Westmoreland (350 F. Supp. at 42, 11a-12a)). The answer is twofold. It was felt that the interests of all students in the elementary grades could best be served by retaining the neighborhood concept for young children and that the quagmire of busing with a resulting loss of white students to private schools and parent support for elementary programs was not justified for a shift of 7+% of all elementary students. Secondly, while the Board felt the District Court's finding was error and that its judgment in this respect was correct, its reluctance to appeal and its desire to cooperate with the Court was so great, it did not cross-appeal until an appeal had been filed by the plaintiffs.

The plaintiffs and the Court of Appeals have relied heavily on this Court's opinion in *Davis* v. *Board of School Commissioners of Mobile County,* 402 U.S. 33 (1971) to support their argument that the Danville School Board was not justified in treating the north and south sides of the Dan River separately. However, the *Davis* case is clearly distinguishable from the *Medley* case because the School Board in *Davis* was engaged in an obvious sham, while the Danville Board was faced with a geographical reality which it was entitled to consider. In the *Davis* case the geographical division was only a highway. In the case at hand the division is a river which is buttressed by heavy commercial development on both banks across most of the city as well as by a major highway. The District Court personally viewed the scene and concluded there was no safe crossing

for pedestrians. (350 F. Supp. at 43-45, 49-50; 15a-17a, 24a-26a). It is apparent the District Court considered the river barrier justified the Danville Board in treating the two sides of the river independently at the elementary level because the plan which the District Court adopted also did so. (350 F. Supp. at 50-51, 25a-27a). Additionally, the School Board in *Davis* could not justify its treatment of a highway as a barrier since it already operated 200 school buses, 402 U.S. at 35. The Danville Board does not operate a school bus system.

Furthermore, the School Board in *Davis* was a recalcitrant School Board which had ignored previous Court directives and which was using the highway as a mere excuse for maintaining a school system which was obviously segregated. Indeed, even under the District Court's plan in *Davis,* there were seven all black junior or senior high schools and twelve all black or nearly all black elementary schools serving ninety percent of the black elementary students. As pointed out above, each of the secondary schools in Danville exhibit near racial balance and every elementary school was found to be at least twenty-one percent white.

In *Keyes, supra* at 2695 this Court pointed out:

> "This is not to say, of course, that there can never be a case in which the geographical structure of or the natural boundaries within a school district may have the effect of dividing the district into separate, identifiable and unrelated units. Such a determination is essentially a question of fact to be resolved by the trial court in the first instance, but such cases must be rare."

In the case at hand a school board, which does not operate a school bus system, made a rational and nondiscriminatory choice that it would not force elementary school children to take unsafe routes to school, and this

decision was ratified by the District Court. It is important that courts recognize the good faith efforts of a conscientious board acting in the best welfare of all children.

Mr. Justice Powell has proposed a test for determining whether a school system is unitary. This test represents a careful "balancing of the individual and collective interests", *Swann, supra* at 16, within the framework of the guidelines laid down in the previous decisions of this Court. The test proposed in *Keyes, supra,* is as follows:

> "A system would be integrated in accord with constitutional standards if the responsible authorities had taken appropriate steps to (i) integrate faculties and administration; (ii) scrupulously assure equality of facilities, instruction and curricula opportunities throughout the district; (iii) utilize their authority to draw attendance zones to promote integration; and (iv) locate new schools, close old ones, and determine the size and grade categories with this same objective in mind . . . A school which happens to be all or predominantly white or all or predominantly black is not a "segregated" school in an unconstitutional sense if the system itself is a genuinely integrated one."

93 S. Ct. at 2706 (Justice Powell concurring in part and dissenting in part).

The Danville School system meets this test. As discussed above, the Danville system provides integrated faculties, administration and extracurricular activities within equal facilities. No contention has been made that the instruction and curricular opportunities are not equal through the system.

The Danville Board has drawn attendance zones to promote maximum integration. The District Court found that:

> "It should be particularly noted that the school board, having taken into consideration physical barriers, boundaries, and other such factors, drew the attendance zones on a geographical basis in order to affectuate a neighborhood school system. Examination of a map, which shows the residences of all white and Negro students in Danville, as well as the elementary attendance zones, demonstrates that these zones have not been drawn in order to maintain segregated schools or to hinder desegregation. For example, Taylor previously was an entirely black school and now is a predominately white school. *Rather, it appears that if any consideration has been given to race in the formulation of these zones, the school board has considered race only in order to achieve racial balance within the zones while adhering to the neighborhood school concept.* The Stonewall Jackson attendance zone, as an instance, is a narrow zone which extends approximately three-fourths of the way down the north-eastern border of the city. The northern portion of this zone is almost exclusively white and the bottom portion is nearly all black. While the configuration of this zone facilitates the safety and ease of student transportation, as U.S. Route 29 is the western border of this zone, it also accomplishes the creation of a zone that closely approximates the black-white ratio of the student population on the northern side of the city. For the 1970-1971 school year, attendance zones were created to accommodate the pairing of Berkeley, a predominately white school in 1969-1970, with Westmoreland, an all-black school in 1969-1970. Also, in 1971, the Woodberry Hills attendance zone was altered to halt the decline in black enrollment at that school."

[Emphasis supplied].

(350 F. Supp. at 43, 13a). Finally, in light of this Board's past history there is no indication that it will not locate new

schools and close old ones with the objective of promoting integration.

The Danville Board urges this Court to adopt the above test as the consequences of doing otherwise are likely to be harmful to all children, regardless of race. It further urges this court to sustain the Petitioner's position that the system was unitary.

The Court Of Appeals For The Fourth Circuit Erred

The decision of the Appellate Court reversed the finding of fact of the District Court. The District Court had been thoroughly briefed on the situation and had personally visited the schools and areas involved. This decision can only be interpreted as requiring busing to attain a racial balance of students in line with the plaintiff's claim that the percentage of each race in each school must be a majority white and more nearly approximate the overall composition of the races in the system. The School Board believes this is an error that should be considered by this Court.

Petitioners believe that all would readily concede that cross town transportation of elementary students will be necessary to produce greater racial balance in the Danville schools. This will necessarily mean the end of the neighborhood school concept in Danville. This is not an isolated instance of such a problem. If this Court allows the Circuit Court decision to stand in a situation where a School Board had voluntarily and affirmatively acted in good faith to comply with the duty to integrate, other school boards will necessarily draw the conclusion that busing to achieve a near racial balance is essential to a unitary system. Other school boards will be forced to this conclusion because in the Danville case, despite the clear finding of necessity of avoiding crossing the Dan River for elementary students and

the other findings of facts of the District Court, the Circuit Court reversed the lower Court and directed a study of all grades including junior high schools *where the parties below had stipulated and the District Court found that integration had been completed.*

The Danville School Board does not urge the adoption of a rule which would make the walk-in school sacrosanct. There are undoubtedly school systems where meaningful desegregation can only be accomplished by non-contiguous pairing and zoning and the attendant transportation of students. However, in school districts where there is meaningful desegregation without the use of such tools, the courts should consider the advantages of the neighborhood school in refining the definition of a unitary school system. To abolish the neighborhood school system is to risk the counterproductive result of still wider racial separation. *Keyes, supra* at 2718 (Justice Powell concurring in part and dissenting in part). In a school district where there is already substantial desegregation in every school, the doubtful possibility that cross town transportation would provide any advantage to the children is simply not worth this detriment.

More importantly, a neighborhood school system promotes a number of affirmative values which any plan involving transportation will destroy. The advantages of a neighborhood school system have been more adequately and eloquently explained elsewhere, *Keyes, supra* at 2715-2719 (Justice Powell concurring in part and dissenting in part); *Deal* v. *Cincinnati Board of Education,* 369 F. 2d 55, 60 (6th Cir. 1966), but basically, the advantages are minimization of safety hazards, economy of costs, ease of administration and better home-school communication.

The decision of the Circuit Court in this case is in contravention of the balancing of equities approach generally

taken by the Court in desegregation matters, and it completely abrogates the discretion normally given to the trial judge in an equity proceeding to do such balancing of interests. See *Swann, supra* at 28, 31. The results will be a loss of funds now expended for quality education, increased enrollment at private schools, a white flight from the City and a cycle of more busing, a loss of many white and colored students whose presence in the classrooms acted as pacesetters for quality education, and the loss of parent support for the elementary neighborhood school. The price is too great for the small increases in percentages to be attained.

CONCLUSION

The Danville School system was fully desegregated without any court action before the plaintiffs filed the action in question here. At the time this action was filed, there was perfect racial balance in the high school, near racial balance in the junior high schools, and substantial integration in every elementary school. There were only four majority Negro elementary schools and each of those schools had at least twenty-one percent white students. Furthermore, there was equality of facilities and complete integration of faculties, administrative staff and extracurricular activities. This commendable system was achieved without court order in a metropolitan area with serious problems of residential segregation brought on, at least in part, by the location of federally funded housing projects. This Court has stated in the past that every school in every school district does not have to have perfect racial balance and that other factors besides racial proportions should be considered in determining if a school system is unitary.

Even if the system were not unitary, the Fourth Circuit was in error in reversing the District Judge. The practical

effect of the Fourth Circuit's decision is to tell the District Judge to bus and to bus until perfect racial balance is achieved unless the time and distance involved represents a health hazard to the children of the particular age group being bused. While the position of your Petitioners is that the system was unitary, they say the Circuit Court was in error in reversing the other findings of the District Court, which carefully reviewed the stipulations submitted by the parties, conferred many times with counsel and the representatives of the Board qualified to advise on the matters in issue, studied the many exhibits filed and personally drove around the district to view the geographical, demographical, and physical facts involved.

For the reasons stated, the School Board of the City of Danville respectfully submit that the Petition for Certiorari should be granted to review the judgments of the United States District Court and the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-707

THE SCHOOL BOARD
OF THE CITY OF DANVILLE, VIRGINIA, ET AL,
Petitioners,

v.

CHARLES L. MEDLEY, AN INFANT, BY
GRACIE MEDLEY HAIRSTON AND LEROY HAIRSTON,
HIS MOTHER AND STEPFATHER AND NEXT FRIENDS, ET AL,
Respondents.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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Opinion of United States District Court for the Western District of Virginia, C.A. No. 71-C-44-D

Dated August 22, 1972

By H. E. Widener, Jr., District Judge

This is a school desegregation case following in the wake of *Brown* v. *Board of Education,* 347 U.S. 483, 74 SCt. 686, 98 L.Ed. (2d) 873 (1954), as interpreted by other cases but particularly including *Green v. County School Board of New Kent County, infra,* and *Swann* v. *Charlotte-Mecklenburg Board of Education, infra.* It is Danville's first time in court, its desegregation having been accomplished by voluntary compliance. Plaintiffs, Negro parents of children attending public schools in the City of Danville, insist that only the mathematical precision of the racial ratio of school population, or its near equivalent, reflected in each public school, may meet the constitutional mandate. Defendants with equal fervor take the position that geographic attendance zones which are racially non-discriminatory comply with the equal protection clause regardless of the racial makeup of the schools which may result. Between the two antithetical positions as annunciated above, both logically defensible, or in accord with one of them, the court must make its delicate choice.

The case was submitted on answers to interrogatories, exhibits, stipulations, data, and briefs. Both sides declined to submit expert or other oral testimony.

Danville's population as shown in the 1970 Census is 46,391. It is 77.02% white and 22.98% black. Census figures from 1900 to 1970 show the ratio of Negroes to total population has decreased, Danville having been 39.45% Negro in 1900, 32.64% in 1910, 26.37% in 1920, 24.83% in 1930, 31.05% in 1940, 30.18% in 1950, and 24.73% in

1960. Pittsylvania County, in which Danville is situated, has a total population of 19,774. The Census from 1900 to 1970 for Pittsylvania County shows that its percentage of Negroes has also rather steadily decreased. The county was 45.39% black in 1900, 39.77% in 1910, 35.41% in 1920, 34.28% in 1930, 30.77% in 1940, 30.89% in 1950, 34.24% in 1960, and 33.63% in 1970. Obviously, there has been no white flight from Danville with which city expansion has not kept pace.

The population profile of the public schools presents only a slightly different picture. Total school population is 31.25% Negro. The city's only high school, George Washington, which is located on the south side of the Dan River, is 30.6% Negro. Of course, plaintiffs makes no complaint about the high school. Not taking into consideration the high school, which is attended by students residing on the north and south sides of the river, the schools on the north side of the river are 17.01% black and the schools on the south are 45.76% black. At present, all students, except those in high school, are assigned to schools on the basis of attendance zones. The Dan River divides the city into two sectors, and no one attendance zone includes students living on both sides of the river. As these figures show, the Negro population of Danville is not evenly dispersed throughout the city, but is more numerous on the south side of town below the Dan River.

As the chart below shows, during the 1971-1972 school year, Danville operated three junior high schools. One of them, Bonner, is located on the north side of town. It was 19.27% Negro. The two junior highs on the south side, Langston and Lee, together had a 44.17% Negro population. The following chart shows the junior high school enrollment by race for the 1971-1972 school year:

School	Side of River	Grades	Capacity	Enrollment	White	Negro	% Negro
Bonner	N	7-9	1200	1240	1001	239	19.27
R. E. Lee	S	7-9	815	712	370	342	48.03
Langston	S	7-9	800	568	349	219	38.55
TOTALS				2520	1720	800	31.74

The school board has advised the court of its intention to alter the attendance zones of Langston and Lee, the two junior high schools on the south side of the river, for the 1972-1973 school year. It stated that if a change were not made, each of these schools would be less representative of the Negro population for the 1972-1973 school year. The 1972-1973 proposed plan will change the feeder schools into these two junior highs so as to more precisely reflect the racial ratios south of the Dan River. The school board has recognized that a desirable and practical way of achieving desegregation is by controlling the source of students for the junior high schools. This also has the advantage, recognized by educators, of keeping the students together through as many years of school as possible. With the alteration, Lee, 48.85% Negro in 1971-1972, will be 46.61% Negro, and Langston, 38.68% Negro in 1971-1972, will be 41.89% Negro. The total junior high population on the south is 44.44% black, and the total junior high and elementary student population on the south is 45.76% black.[1]

[1] The chart outlining the proposed changes and the defendants' answer to interrogatories differ slightly as to the numbers of black and white students at Langston and Lee in 1971-1972. The figures in the answer to interrogatories show that in 1971-1972 Lee was 48.03% Negro rather than 48.85%, that Langston was 38.55% Negro rather than 36.68% Negro, and that the south side junior high population was 44.17% Negro rather than 44.44%. These differences, although unexplained, are unimportant .

During the 1971-1972 school year, Danville operated fourteen elementary schools, seven on the north side of town and seven on the south side. The elementary school population was 15.86% Negro on the north side of town and 46.59% Negro on the south. Data for each of the elementary schools operated during the 1971-1972 school year follows:

1971-1972
ELEMENTARY SCHOOLS

School	Side of River	Grades	Capacity	Enrollment	White	Negro	% Negro
Bellevue	N	1-6	375	276	175	101	36.59
G. L. H. Johnson	N	1-4	665	498	457	41	8.23
I. W. Taylor	N	5-6	540	262	247	16	6.10
Park Ave. Stonewall	N	1-6	330	309	261	48	15.53
Jackson Woodberry	N	1-6	480	310	253	57	18.38
Hills Woodrow	N	1-6	480	436	404	32	7.33
Wilson	N	1-6	600	342	251	91	26.60
SUBTOTAL	N	1-6	3470	2433	2047	386	15.86
Cedarbrook	S	1-6	425	412	392	20	4.85
E. A. Gibson	S	3-6	960	394	83	311	78.93
Forest Hills	S	1-6	360	254	192	62	24.40
Grove Park	S	1-2	300	267	54	213	79.77
J. L. Berkeley	S	1-3	330	296	65	231	78.04
Schoolfield	S	1-6	680	500	438	62	12.40
Westmoreland	S	4-6	950	326	84	242	74.23
SUBTOTAL	S	1-6	4005	2449	1308	1141	46.59
TOTAL	N+S	1-6	7475	4882	3355	1527	31.27

For the 1972-1973 school year, the school board has established a kindergarten program. This program is not required by any Virginia Statute, and no child is required to attend. As this program was not in operation during the 1971-1972 school year, the chart showing the attendance at the various elementary schools for the last school year does not reflect any kindergarten students. In an affidavit, filed August 9, 1972, the Superintendent of schools stated that 441 children have registered for the program, although he did not know at that date exactly how many children will actually participate. On the south side, the kindergarten grades will be located at Cederbrook, Schoolfield, Forest Hills, Grove Park, and Berkeley, and all children will be assigned to schools on the basis of the elementary attendance zones, as if they were entering the first grade. On the north side of the river, the kindergarten grades will be located at Bellevue, Woodrow Wilson, Stonewall Jackson, and G. L. H. Johnson. All children will be assigned to schools according to the elementary attendance zones, except that, because of the anticipated near full-capacity enrollments in the non-kindergarten grades at Woodberry Hills and Park Avenue, kindergarten students who would normally attend those schools will attend G. L. H. Johnson.

No issue is made of the summer school program or of the Head Start program, plaintiffs having conceded that each of these programs is operated in a fully desegregated manner. Plaintiffs have not complained of the operation of the extracurricular activities in any of the schools. Similarly, as plaintiffs admit that the faculties are realistically desegregated, no complaint is made concerning the assignments of teachers. The chart, which follows, shows that the teachers have been assigned on an almost completely mathematically precise basis:

6a

1971-1972

TEACHERS

	Total Teachers	Negro Teachers	% Negro Teachers	% Negro Students
HIGH SCHOOL				
Geo. Washington	110	23	20.90	30.6
JUNIOR HIGH SCHOOLS				
Langston	32	12	37.50	38.55
Bonner	58	20	34.48	19.27
R. E. Lee	40	10.5	26.25	48.03
SUBTOTAL FOR JUNIOR HIGH SCHOOLS	130	42.5	32.69	31.74
ELEMENTARY SCHOOLS (North)				
Bellevue	13	5	38.46	36.59
G. L. H. Johnson	20	6	30	8.23
I. W. Taylor	11	2	18.18	6.10
Park Avenue	12	4	33.33	15.53
Stonewall Jackson	14	4	28.57	18.38
Woodberry Hills	17	5	29.41	7.37
Woodrow Wilson	14	4	28.57	26.60
SUBTOTAL FOR N. ELEMENTARY	101	30	29.70	15.86

	Total Teachers	Negro Teachers	% Negro Teachers	% Negro Students
(South)				
Cedarbrook	15	5	33.33	4.85
E. A. Gibson	21	6	28.57	78.93
Forest Hills	12	4	33.33	24.40
Grove Park	11	3	27.27	79.77
J. L. Berkeley	14	4	28.57	78.04
Schoolfield	21	5	23.80	12.40
Westmoreland	16	7	43.75	74.23
SUBTOTAL FOR S. ELEMENTARY	110	34	30.90	46.59
TOTAL ELEMENTARY	211	64	30.33	31.27
GRAND TOTAL	341	106.5	31.23	31.25

Plaintiffs, during the course of this action, have complained about the assignment of professional personnel, other than teachers. By pre-trial order entered on July 12, 1972, plaintiffs were required to set out, with particularity, wherein such assignments were constitutionally invalid. On July 26, 1972, plaintiffs filed a pleading stating that they no longer contend that the administrative staffs are unconstitutionally constituted. The administrative staffs, composed of principals, assistant principals, guidance counselors, and librarians, were 23.08% Negro during the 1971-1972 school year. An additional Negro guidance counselor has been employed at the high school for the coming school year, and, in addition, the school board intends to employ another black administrator if funds are available.

The profile of the Danville school system has changed significantly during the past several years. Prior to May, 1965, the City of Danville operated two senior high schools, two junior high schools, two schools with grades one through eight, and eleven elementary schools. It is agreed that all of the schools were virtually all-black or all-white at that time, although figures showing the ratio of Negro and white students do not appear in the record. An indication of the extent of segregation at that time is shown by the following statement in the school board's "Statement of Policies and Plans for Compliance Under Title VI of the Civil Rights Act of 1964," issued on May 18, 1965:

> "Six of these schools were integrated during the past two years with approximately 21 Negro children transferring or initially assigned to formerly all-white schools."

By the statement of May 18, 1965, the school board also adopted a freedom of choice plan. Students entering the first grade, junior high school, senior high school, and the twelfth grade, and students being initially admitted in the city's public school system were assigned to schools they requested. All other students were assigned to the schools they attended the preceding year, but were permitted to make application for placement in another school. Danville operated under a *Jefferson County* type plan in which each student was notified in writing each year of his right to transfer to another school in which his race was in a minority.

In March, 1969, the Department of Health, Education and Welfare approved the school board's plan for desegregation. That plan supplemented the freedom of choice plan by geographically zoning five elementary schools and

expanding faculty integration for the 1969-1970 school year. Although the extent of desegregation under the 1969 plan was not achieved under the 1965 freedom of choice plan, some progress was achieved. Of the eighteen schools in operation 1969-1970, thirteen were integrated to at least some extent and 17% of the Negro students attended integrated schools. The plan, as subsequently modified by the school board and again approved by HEW, included numerous changes for the 1970-1971 school year. George Washington High School became the only school serving grades ten, eleven, and twelve. Bonner Junior High was constructed in 1970 and was attended by all junior high students on the north side of town. The two other junior high schools were geographically zoned. The elementary schools that had not been zoned in 1969-1970 were either zoned or paired, and one all-Negro elementary school was closed. In 1970-1971, no student attended an all-black or all-white school, and no student attended a school that was less than 21% white. The plan contained a majority to minority transfer provision, permitting any student attending a school in which his race was in the majority to elect to attend another school where his race was in the minority if space were available in that school. The plan also called for complete faculty desegregation. After this plan was implemented, HEW representatives visited the Danville school system and approved the plan in operation. In July, 1971, HEW suggested that the school board review its desegregation plan in view of *Swann v. Charlotte-Mecklenburg Board of Education,* 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed. (2d) 554 (1971). The school board rezoned the attendance area for one elementary school which, because of changing residential patterns, was becoming a one race school. But HEW informed the school board that this plan

did not appear to accomplish the greatest possible degree of integration. The day following this letter from HEW, the present suit was filed, and the school board has been unable to obtain further suggestions from the Department of Health, Education and Welfare. But, up until the time the present suit was filed, the school board worked closely with HEW and was commended by HEW for its efforts in desegregating the school system.

The following chart which compares the white-black ratio in all the schools for the 1971-1972 school year with such ratio for the 1969-1970 school year, demonstrates the substantial progress that has been made in Danville:

School	Side of River	1969-1970 Grades	1969-1970 Students White	1969-1970 Students Negro	1969-1970 % Negro	1971-1972 Grades	1971-1972 Students White	1971-1972 Students Negro	1971-1972 % Negro
HIGH SCHOOLS & JR. HIGH SCHOOLS									
Geo. Washington	S	9-12	2183	134	5.78	10-12	1544	682	30.63
Langston	S	9-12	0	784	100.00	7-9	349	219	38.55
Bonner	N		Erected in 1970			7-9	1001	239	19.27
Robert E. Lee	S	7-9	845	92	9.81	7-9	370	342	48.03
Woodrow Wilson	N	7-8	488	45	8.44				
SUBTOTAL FOR HIGH SCHOOLS & JR. HIGH SCHOOLS			3516	1055	23.08		3264	1482	31.22
ELEMENTARY (North)									
Bellevue	N	1-6	263	34	11.44	1-6	175	101	36.59
GLH Johnson	N	1-6	801	1	.12	1-4	457	41	8.23
IW Taylor	N	1-8	0	202	100.00	5-6	246	16	6.10
Park Avenue	N	1-6	246	66	21.15	1-6	261	48	15.53
St. Jackson	N	1-6	396	20	4.80	1-6	253	57	18.38
W. F. Grasty	N	1-6	0	193	100.00	Not in oper. since June, 1970			
Woodberry Hills	N	1-6	408	12	2.85	1-6	404	32	7.33

(Continued)

School	Side of River	1969-1970 Grades	1969-1970 Students White	1969-1970 Students Negro	1969-1970 % Negro	1971-1972 Grades	1971-1972 Students White	1971-1972 Students Negro	1971-1972 % Negro
Woodrow Wilson	N					1-6	251	91	26.60
SUBTOTAL N. ELEMENTARY (A)			2114	528	19.98		2047	386	15.86
(South)									
Cedarbrook	S	1-6	369	24	4.04	1-6	392	20	4.85
E. A. Gibson	S	3-6	0	649	100.00	3-6	83	311	78.93
Forest Hills	S	1-6	280	28	9.09	1-6	192	62	24.40
Grove Park	S	1-6	244	7	1.99	1-2	54	213	79.77
J. L. Berkeley	S	1-6	225	47	17.27	1-3	65	231	78.04
Schoolfield	S	1-6	448	1	.22	1-6	438	62	12.40
Westmoreland	S	1-8	0	760	100.00	4-6	84	242	74.23
SUBTOTAL S. ELEMENTARY (B)			1566	1516	49.19		1308	1141	46.59
TOTAL FOR ALL SCHOOLS			8226	3347	28.92		6619	3009	31.25

(A) If the eighth grade students attending I. W. Taylor during the 1969-1970 school year are not included in the north side elementary subtotal for that year, the north side elementary schools were 18.66% Negro in that year.

(B) If the eighth grade students attending Westmoreland during the 1969-1970 school year are not included in the south side elementary subtotal for that year, the south side elementary schools were 47.99% Negro in that year.

It should be particularly noted that the school board, having taken into consideration physical barriers, boundaries, and other such factors, drew the attendance zones on a geographical basis in order to effectuate a neighborhood school system. Examination of a map, which shows the residences of all white and Negro students in Danville, as well as the elementary attendance zones, demonstrates that these zones have not been drawn in order to maintain segregated schools or to hinder desegregation. For example, Taylor previously was an entirely black school and now is a predominately white school. Rather, it appears that if any consideration has been given to race in the formulation of these zones, the school board has considered race only in order to achieve racial balance within the zones while adhering to the neighborhood school concept. The Stonewall Jackson attendance zone, as an instance, is a narrow zone which extends approximately three-fourths of the way down the northeastern border of the city. The northern portion of this zone is almost exclusively white and the bottom portion is nearly all black. While the configuration of this zone facilitates the safety and ease of student transportation, as U.S. Route 29 is the western border of this zone, it also accomplishes the creation of a zone that closely approximates the black-white ratio of the student population on the northern side of the city. For the 1970-1971 school year, attendance zones were created to accommodate the pairing of Berkeley, a predominately white school in 1969-1970, with Westmoreland, an all-black school in 1969-1970. Also, in 1971, the Woodberry Hills attendance zone was altered to halt the decline in black enrollment at that school.

The Danville school board does not own or operate school buses, and no students are transported to school at public expense. Those students who do not live within walking

distance of their respective schools are transported either by their parents in private cars or by commercially operated buses. Bus tickets are sold at reduced rates to school children. There has been no evidence of any hardship or complaint in getting children to school, not at public expense, using the 1971-1972 attendance zones.

As is obvious from the above description of Danville's school system, the school board has drawn the attendance zones for all of its schools, except for the high school, in such a manner that students are not required to cross the Dan River. A description of the City of Danville is critical to the understanding of this present assignment scheme and to any relief this court may order. The court has taken a view of the entire city on which the attorneys were invited to attend but declined. Danville, a highly industrialized and commercial city, located in southern Virginia, is divided by the Dan River into two areas of approximately equal geographical size. Through the middle of the city, the river makes a horseshoe curve. Located on the south side of this curve is a region in which is concentrated a substantial part of the Negro population on the south side of the Dan River. This concentration of Negroes is bound to have received impetus from the location of three low-cost housing developments below the horseshoe curve, all of which have been built since World War II. Two of those projects were constructed by the federal government and the third was federally financed. A substantial portion of the Negro population of the north side of the city is located in the northeast section of the city on the north side of the horseshoe curve. The plaintiffs have not pointed to any city ordinance which has tended to cause or effectuate residential segregation or to any use of racially restrictive covenants in property deeds. Neither are the public housing developments segregated.

The Traffic Control Division of the Danville Police Department, in 1971, completed a traffic survey of the streets in Danville and of the five bridges joining the southern and northern banks of the river, which has been obtained from the State Highway Department and is included with the record for convenience. In a twenty-four hour period, Robertson Bridge in the western section of Danville was crossed by 15,710 vehicles, Aiken Bridge on the western end of the horseshoe curve by 21,840 vehicles, Union Bridge in the middle of the horseshoe turn by 13,550 vehicles, Main Street Bridge on the eastern end of the horseshoe curve by 12,990 vehicles, and Worsham Bridge, just below Main Street Bridge, by 7,300 vehicles. The survey also shows that heaviest traffic on these bridges occurs during the hours that children are going to and coming from school. The three bridges which join the central city area on the south bank with the north side of the city and which are in the horseshoe immediately above the concentration of Negro population in the south bank are the Aiken Bridge, the Union Street Bridge, and the Main Street Bridge. There is no walkway on the Aiken Bridge, a very narrow sidewalk on the Union Street Bridge, and a walkway on the Main Street Bridge. However, there are no sidewalks on the north side of the Union Street Bridge. At the northern end of the Main Street Bridge, U. S. Route 58, which runs in an east-west direction, intersects with one of the main north-south thoroughfares in the city. The Robertson Bridge in the western end of the city has a walkway on one side of the bridge. There are no sidewalks on either end of this bridge and at the northern end of this bridge is the intersection of U. S. Routes 58 and 29A. The Worsham Bridge on the eastern end of Danville has a walkway. Three of the bridges, Robertson Bridge, Union Street Bridge, and Main

Street Bridge, are situated near commercial mills and are particularly busy at the time of shift changes at those mills, 8:00 a.m. and 4:00 p.m., the same time children are going to and coming from school.

Reinforcing the division of Danville by the Dan River is a four lane highway which parallels the Dan River on its north bank from city limit to city limit, a distance of approximately four and one-half miles. This heavily traveled highway, known as Riverside Drive in Danville, is U. S. Route 29A for more than a mile and U. S. Route 58 from city limit to city limit. While it is a four lane highway, at most of the intersections there are turn lanes, thus, making six lanes of traffic. Like the river, this highway must be crossed to reach any school on the north side of town from the south side and vice versa.

Riverside Drive is not immediately adjacent to the river, there being a strip of land on the north side of the river between the river and the highway. The highway, the river, the strip of land in between, together with the streets adjacent to the river on the south side of the river, form a corridor which is at no point much less than a quarter of a mile in width and is at most places approximately a third of a mile wide. Except for approximately a mile on the westernmost end of the city, there are virtually no residences in the strip between the river and the highway, and even the residential strip in the western end is very sparsely populated. Rather, this strip is, for approximately three and one-half miles, a highly developed commercial area. The commercial development is on both sides of Riverside Drive, and there are no sidewalks of any consequence on either side of Riverside Drive.

The traffic survey shows the number of vehicles at various points on Riverside Drive in a twenty-four hour period as

27,410, 25,450, 20,370, 14,800, and 18,520. The heaviest traffic occurs at the time children are going to and from school. The speed limit is forty miles an hour on Riverside Drive, and there is considerable tractor-trailer and other through traffic.

Also buttressing the division of the city, occasioned by the Dan River and Riverside Drive, are similar, four lane, commercially developed streets on the south side of the river. These streets, Memorial Drive, which for approximately a mile is U. S. Route 29A, Union Street, Canal Street, and their extensions, all closely parallel the river for nearly four miles. Except for a very small area, approximately a third of a mile long and five hundred feet in depth, in the middle of the horseshoe curve, there are no residences in the area between the river and these streets. The traffic survey indicates that these streets are heavily traveled. At random points on these streets, the number of vehicles in a twenty-four period were 12,880, 19,080, 16,330, 12,160, and 7,830. Few sidewalks exist along this commercially developed property on the south bank of the river.

Defendants strongly contend that the present school system in Danville, Virginia is unitary system and that, accordingly, the plaintiffs are entitled to no relief. The Fourth Circuit, in *Adams* v. *School District Number 5, Orangeburg County,* 444 F(2d) 99 (4th Cir. 1971), considered several desegregation cases, including one which arose in Roanoke, Virginia, *Green* v. *School Board of the City of Roanoke.* The Fourth Circuit found unacceptable the plan approved by the district court for elementary schools in Roanoke. That plan yielded a school system not dissimilar to the one presently in operation in Danville. Examination of the record in *Green* shows that the Roanoke student population was 25% Negro and 75% white. The school board's ele-

mentary school plan, which was implemented by the district court with only minor changes, resulted in three schools having less than 10% white students, eleven schools with less than 10% black students, and eleven schools with 10% or more Negro students and 25% or more white students. See *Green* v. *School Board of the City of Roanoke,* 316 F. Supp. 6, 9 (W.D. Va. 1970). In Danville, where the school population is 31.25% Negro, each of four elementary schools for 1971-1972 was less than 10% Negro and each of four other elementary schools is more than 74% Negro. Of the seven elementary schools on the north side of the city, only two approximated the black-white student ratio of that side of the city and only one approached the city-wide ratio. Of the seven elementary schools on the south side, only one approached the black-white student composition of the south side of the city and only approached the city-wide percentage. Additionally, although the school board has taken major steps in undertaking its affirmative duty to convert to a unitary school system, further dismantling of the previously segregated system, as the comparison with the Roanoke plan indicates, is required, and can be achieved with minimal disruption to the schools, their faculties and staffs, the students and their parents, and to the school system as a whole.

In the way of relief, plaintiffs insist that the only acceptable solution is that the school system be redesigned so that it will be mathematically precise or very, very short of mathematically precise. On April 14, 1972, plaintiffs presented to the defendants a chart

> ". . . showing the numbers of children whose transfer from their respective areas of residence and whose enrollments in schools more distant from their homes would achieve the maximum degree of desegregation of the elementary schools."

As the plaintiffs stated, they did not purport ". . . to suggest the details or extent of a remedial plan." On July 31, 1972, plaintiffs included in their memorandum a plan in non-chart form which embodies the same changes. Neither plan sets forth the grades of the children it purports to move, the method of selection of the children to be moved, or any details concerning the transportation of the children to be moved. The plaintiffs have not submitted any plan at all concerning the junior high schools. The substance of plaintiffs' plan is embodied in the following chart:

School and Capacity	RETAIN B	RETAIN W	RECEIVE B	RECEIVE W	SEND B	SEND W	SEND TO	NET B	NET W	% B
Grove Park(S) Gibson(S) 1260		216		451	235		217 Johnson(N) 13 Forest Hill(N)	289	667	30.23
Schoolfield(S) 680	72		84			80	Grove-Gibson(S)	156	360	30.23
Johnson- (N) Taylor (N) 1205	60		217			96	Grove-Gibson(S)	277	638	30.27
Woodberry(N) 480	32		79			166	Westmoreland(S)	111	254	30.41
Westmoreland(S) Berkeley (S) 950	220			341	257		18 Schoolfield(S) 79 Woodberry(S) 78 Cedarbrook(S) 26 Park Avenue (N)	220	503	30.42
Cedarbrook(S) 425		225	78			181	Westmoreland(S)	98	225	30.34
Forest Hills(S) 360		190	13			51	Grove-Gibson(S)	81	190	29.88
Park Avenue(N) 330		174	26			95	Grove-Gibson(S)	75	174	30.12
TRA[illegible]NT					492	679				
Wilson (N) (Bellevue) 600	138				59	107		138	318	30.26
Jackson(N) 460	57		54			12		111	254	30.41

Defendants have submitted no plans of their own, but, at the suggestion of the court, have outlined proposals which combine all fifth and sixth grades on each side of the river, without transporting students across the river or between other schools. These plans follow:

	Grade	Negro	White	% Negro
OUTHSIDE				
Grove Park	K-4	95	115	45.23
Schoolfield	K-4	57	314	15.36
Forest Hills	K-4	51	110	31.68
Cedarbrook	K-4	17	308	5.23
Gibson	5-6	332	421	44.09
Westmoreland	K-4	678	106	86.48
TOTAL		1230	1374	47.23

ALTERNATE PLAN — (Keeping Berkeley open)

SOUTHSIDE				
J. L. Berkeley	K-1	232	41	84.98
Westmoreland	2-4	446	65	87.28
NORTHSIDE				
Bellevue	K-4	85	152	35.86
Woodrow Wilson	K-4	57	159	26.39
Stonewall Jackson	K-4	52	196	20.97
Woodbery Hills	K-4	25	293	7.86
Park Avenue	K-4	36	173	17.22
I. W. Taylor	K-4	52	504	9.35
GLH Johnson	5-6	110	641	14.65
TOTAL		417	2118	16.45

Although the plaintiffs contend otherwise, mathematical precisions is not constitutionally required, as the following language from *Swann v. Charlotte-Mecklenburg Board of Education, supra,* shows:

> "If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse. The constitutional command to desegregate schools does not mean that every school in ever[illegible]mmunity must always reflect the racial composition[illegible]ool system as a whole.
>
> * * * *
>
> "In light of the above, it should be clear that the existence of some small number of one-race, or virtually one-race, schools within a district is not in and of itself the mark of a system that still practices segregation by law." *Id.* at 24, 26, 91 S.Ct. 1267, 28 L. Ed. (2d) 554.

Chief Justice Burger, in considering whether to grant a stay in a desegregation case, had this to say about *Swann* and mathematical precision:

> "Nothing could be plainer, or so I had thought, than Swann's dissapproval of the 71-29% racial composition found in the *Swan* case as the controlling factor in assignment of pupils, simply because that was the racial composition of the whole school system. Elsewhere in the *Swann* opinion we had noted the necessity for a district court to determine what in fact was the racial balance as an obvious and necessary starting point to decide whether in fact any violation existed; we concluded, however, that 'the very limited use made of the mathematical ratios was within the equitable remedial discretion of the District Court.' 402 U.S. at 25." *Winston-Salem/Forsyth County Board of Education* v. *Scott,* 404 U.S. 1221, 1228-1229, ... S.Ct. ....., ..., L.Ed. (2d) ..... (1971).

However, the approval of a plan which achieves less desegregation than that proposed in an alternate plan necessitates a showing that the alternate plan is impracticable. *Adams, supra* at 101. *Thompson* v. *School Board of the City of Newport News,* ..... F(2d) ....., No. 71-2032 (4th Cir., Aug. 2, 1972). The practicability of a plan must be assessed in light of all the circumstances present and in recognition that each school system has unique characteristics, *Green* v. *County School Board of New Kent County,* 391 U.S. 430, 439, 88 S.Ct. 1689, 20 L.Ed. (2d) 716 (1968). In particular, *Swann* notes that the demographic configuration of the community, the "congested and complex traffic patterns," and the permanence of the solution, as well as the distance of travel, time required for travel, health, safety, and age of the students, and the educational process as a whole are among the factors which district courts may consider. *Id.* at 14.

In *Davis* v. *Board of School Commissioners of Mobile County,* 402 U.S. 33, 91 S.Ct. 1289, 28 L.Ed. (2d) 577 (1971), the Supreme Court reviewed a desegregation plan for Mobile, Alabama, whose student population was 42% Negro. Desegregation in the school system had been complicated by virtue of the division of the school system by a major north-south highway and the geographic concentration of 94% of the Negro students on the east side of that highway. Schools on the east side were 65% Negro and those on the west were 12% Negro. The elementary school plan approved by the Fifth Circuit did not provide for any combination of the schools on the east side of the highway with those on the west side and resulted in 64% of all Negro elementary school students attending nine schools which were over 90% black. Additionally, over half of all Negro junior and senior high school students attended all-black or

nearly all-black schools. The Supreme Court remanded, finding that inadequate consideration had been given to possible combinations of and cross-busing between the eastern and western schools. The Supreme Court, however, noted that, on remand, "the practicalities of the situation must be taken into account." *Id.* at 37, 91 S.Ct. 1289, 28 L.Ed. (2d) 577.

Thompson, supra, also makes it clear that any peculiar geographic division of the school system, the geographical concentrations of racial groups, and "any traffic hazards or other complexities of transportation" are factors which the district court may properly take into consideration in evaluating proposed plans. *Id.* at 9. In *Thompson,* the Fourth Circuit reviewed a desegregation plan for the elementary schools in Newport News, Virginia. The school district was a consolidation of the old cities of Newport News and Warwick, with 80% of the Negro population living in the old city of Newport News geographically located in the southern tip of the school district. In order to effectuate racial balancing of the elementary schools, it would have been necessary to have extensive cross-busing between the northern and southern regions of the districts, and students would have had to have been transported across two major, congested highways. This, the district court had refused to do. Rather, it approved a plan pairing grades three through seven and assigning students in grades one and two to neighborhood elementary schools. Negroes constituted 36.1% of the total elementary school population and the plan approved left nine of the thirty elementary schools with black majorities ranging from 51.4% to 64.8%. Of the twenty-eight elementary schools serving grades one and two, under the plan implemented by the district court eight remained all-white and four remained all-black. The Fourth Circuit

remanded the case so that the district court might determine whether or not feasible alternatives to the neighborhood assignment plan existed. However, the court reviewed many other decisions approving plans which, because of geographic and demographic peculiarities of the school districts, assigned elementary students to neighborhood schools and achieved substantially less than mathematically precise desegregation. The court concluded:

> "While it seems clear from this review of the authorities that, under proper circumstances, the assignment of the primary grades to neighborhood schools is not *per se* unacceptable, such assignment must rest on specific findings of fact establishing that, on account of ages of the pupils and difficulties of transportation, no other plan affording greater integration is practical." *Id.* at 11-12.

The court has thoroughly considered the plaintiffs' plan and specifically finds that it is impracticable. Because of the geographic location of racial groups in Danville, the plaintiffs' plan involves virtually all the elementary schools in Danville and requires extensive cross-transportation of students between the elementary schools on the north side of town with those on the south side of town. The plan requires that hundreds of young children cross the highly congested and hazardous corridor created by the Dan River, Riverside Drive, and the streets on the south of the river, at a time when this corridor is the most congested and the most hazardous and at the time of shift change for three mills located in the corridor. The plaintiffs have not addressed themselves to the method of transportation which would be needed to implement their plan. It is noted that in some cases the distance between the elementary schools on the north and south sides is minimal. For example,

Woodberry Hills in the north is within a mile of Westmoreland and Berkeley, both of which are located on the south side of the city. Three of the city's five bridges lie in between the Woodberry Hills attendance zone and the Westmoreland-Berkeley attendance zone. One of those bridges, the Aiken Bridge, has no walkway for pedestrian traffic. Union Bridge has a walkway, but there are no sidewalks on the streets north of that bridge. The third bridge, the Main Street Bridge, has a pedestrian walkway, although that bridge is a highly dangerous one as its northern end forms the intersection of Main Street and U. S. Highway 58. Thus, although the direct distance between the schools is a mile, the walking distance computed via Union Street Bridge is approximately two and one-half miles. It is obvious that implementation of the plaintiffs' plan, because of the geographic location of the bridges, the lack of sidewalks and the hazardous traffic conditions, would require the Danville school board, which presently operates no school buses and has no funds appropriated to it for the operation of school buses, to undertake a program of extensive busing and cross-busing. The court recognizes that such transportation is among the useful and necessary tools that may be employed in the process of dismantling segregated school systems. *Swann, supra; Davis, supra.* The order which this court will enter in this case will provide for transporting some students. However, the court does not believe that, unless compelling circumstances require otherwise, the youngest elementary students should be bussed for the sole purpose of achieving mathematical precision. The court is of opinion that, under the facts of this case, students in the fourth grade and lower grades should not be so transported. See *Hightower* v. *West,* 430 F(2d) 552 555 (5th Cir. 1970). And, as no necessity has been shown for

busing the youngest elementary children in Danville, the court's order will only affect the oldest elementary students and will not require that any students be bused across the river or the thoroughfares paralleling the river. In any event, whether in buses, in private cars, or walking, under the plaintiffs' plan, children of tender years must cross dangerous bridges with insufficient walkways, exceedingly congested streets and highways in a completely commercial area with virtually no sidewalks. The court considers particularly dangerous Riverside Drive, or U. S. Highway 58, which is at least six lanes at most intersections and is traveled by much tractor-trailer and other through traffic, moving at rapid speeds. The court is simply not willing to put the safety of young children in jeopardy in order that mathematically exact racial ratios be achieved.

The court is of opinion that a plan establishing one fifth and one sixth grade for each side of the city and leaving the kindergarten through the fourth grades in neighborhood schools is a much safer and more feasible plan. Westmoreland with the capacity of 950 and Gibson with the capacity of 960 each can easily serve all the fifth and sixth grades on the south side of the river in the foreseeable future. Approximately 750 pupils are expected to be enrolled in the fifth and sixth grades on the south side in 1972-1973. Because Gibson is more centrally located and is nearer the population center, the court recommends that it be chosen. In their outline of the court's plan, the defendants have suggested that Berkeley be closed. If Berkeley remains open, there will be two majority black schools on the south side. The court, therefore, believes that it should be closed. Perhaps it may be used by the school board for some other purpose.

On the north side, G. L. H. Johnson has the largest capacity, although it has a capacity for only 665 students.

The school board has stated that Johnson is the only school which can serve all fifth and sixth graders. Based on the attendance figures for the 1971-1972 school year, there will be approximately 750 students in those grades. The court does not wish to adopt a plan which will cause overcrowding of any school and will, thus, shorten the longevity of the plan. Rather, it is the desire of the court to adopt a plan, the utility of which will at least have a chance to remain for many years to come. Therefore, the court concludes that the implementation of the plan requires that all fifth grade students attend one school and all sixth grade students attend another school. As there may be valid reasons with which the court is unfamiliar that dictate other choices, the court suggests, but does not require, that I. W. Taylor be selected as the fifth grade school and that Woodrow Wilson, in addition to serving the kindergarten through fourth grade students for its attendance zone, serve as the sixth grade school. Both of these schools are located near the population centers of the northern region of Danville. The use of Taylor rather than Johnson as the fifth grade school would permit Johnson, which is more centrally located in the Johnson-Taylor attendance zone, to continue to serve the first through fourth grades, in that zone, as well as the new kindergarten grade.

The plan here set out is basically an extension of the plan voluntarily put in operation in the seventh and eighth grades by the school board and substantially improves the school system as required by applicable decisions. The fifth and sixth grades will precisely reflect the black-white ratios of students on each side of the river. None of the elementary schools will be less than 5% Negro, and only three of the elementary schools, G. L. H. Johnson (9.35% Negro), assuming it remains as a kindergarten through fourth grade

school, Woodberry Hills (7.86% Negro), and Cedarbrook (5.23% Negro), will be less than 10% black. In 1971-1972, one elementary school was less than 5% black and three others were less than 10% black. Under the new plan, only one school, Westmoreland, will be majority black, but in 1971-1972, there were four schools more than 75% black, attended by over 65% of the Negro elementary students. Under the new plan, less than 40% of the Negro elementary students will attend the compulsory grades, grades one through four, in the majority black school, and only 41.16% of the Negro elementary students will attend grades kindergarten through four in the majority black school. Besides the three elementary schools that will be less than 10% black and the one that will be majority black, the nine remaining elementary schools will range from 14.65% to 45.23% black in a school system in which the city-wide elementary student population will be 32.04% Negro, the north side elementary population, 16.45% Negro, and the south side elementary population, 47.23% Negro.

It should be noted that the school board, in outlining the plan suggested by the court, altered somewhat the attendance zones of Woodrow Wilson, Stonewall Jackson, and the schools surrounding Westmoreland in order to improve the racial balances at those schools. Even with those changes, the racial composition of Westmoreland remains disturbing. It is hoped that utilization of a majority to minority transfer provision will help to correct the situation at Westmoreland. The majority to minority transfer permits any student in any grade who is assigned to a school in which his race is in the majority to elect to attend another school in which his race is in the minority if space is available at the other school.

To implement this plan, the school board, taking into

consideration any hazardous traffic conditions, and any other factors which may affect walking conditions, must provide free transportation for fifth and sixth grade students assigned to schools beyond normal walking distance of their homes and for any students who elect, under the majority-to-minority transfer provision, to attend schools which are beyond normal walking distance of their homes. No other transportation furnished at public expense is required by this opinion.

The court believes that the plan it is adopting is more feasible than one which transfers students across the Dan River. The court plan avoids the dangerous north-south transportation of students. It can be implemented with practically no disruption to the school system. It will not put a disproportionate share of the burden of desegregation upon Negro students. All four of the schools suggested as locations for the fifth and sixth grades, and particularly Westmoreland, Gibson, and Woodrow Wilson, are geographically located close to both the population centers and to the major Negro residential areas. There is some evidence of changing residential patterns within each sector of the city, but such changes cannot affect the racial compositions of the fifth and sixth grades. Of course, it may be argued that the effectiveness of the court's plan could be put in future jeopardy by substantial increases in the Negro enrollment in the south side elementary schools or by substantial decreases in the Negro enrollment in the north side schools. However, comparison of the 1969-1970, 1970-1971, and 1971-1972 enrollments and the anticipated enrollment in 1972-1973 does not suggest that the schools south of the Dan River are becoming progressively more black or that on the north side are becoming more white. Only the oldest elementary students will attend schools other than their

neighborhood schools. The youngest elementary school children will attend schools closest to their homes and will not have to be bussed to their assigned schools. Students who live in the same area will attend the same school. Students will not have to travel past other schools having the same grades to reach their assigned schools. These incidental advantages of the court's plan are factors which should contribute to the community satisfaction with, and reception of, any plan to achieve a unitary school system and are factors which have been deemed important by courts considering those plans. *Thompson, supra; Copeland* v. *School Board of the City of Portsmouth,* ..... F(2d) ....., No. 71-1993, 71-1994 (4th Cir. Aug. 2, 1972); *Hart* v. *County School Board of Arlington County,* 459 F(2d) 81 (4th Cir. 1972); *Hightower* v. *West, supra.*

Although the plaintiffs have contended that the racial characteristics of the elementary schools can only be eliminated by some combination of schools on the south side with those in the north, their plan also involves transferring south side elementary students to other schools on the south side of the city. Even considering that portion of their plan as a separate plan, it does not achieve as great a degree of desegregation in the school system as a whole as does the court's plan. Furthermore, the court believes that the plan it is adopting is more practicable than one transferring students within each section of the city, for many of the reasons outlined above. In particular, unlike a plan transferring students within each sector of the city, it does not require that the youngest elementary children attend schools other than their neighborhood schools. Furthermore, it is a more economical, more permanent, and less disrupting solution.

The plaintiffs have offered no plans with respect to the junior high schools. Bonner, on the north side of the city,

was 19.27% Negro in the 1971-1972 school years. With the recent changes in the attendance zones for Langston and Lee, by controlling the source of their students, those schools will be, respectively, 41.89% and 46.61% Negro in the 1972-1973 school year. As each of the junior high schools now almost exactly reflects the racial composition of the junior high population of the side of the city in which it is located and as any other racial composition in those schools would necessarily involve transferring students across the river, the court deems it unnecessary to alter those school zones.

As *Davis, supra,* makes clear, the ultimate test for any plan, considering the uniqueness of the school system in which it is to operate, is its effectiveness. Throughout his entire school career, each child in the Danville public school system will attend schools in which the faculties and administrative staffs are completely integrated. In no school will any child be excluded from participation in extracurricular activities on account of his race. Each child will attend a senior high school, the racial composition of which is mathematically precise. While in grades five through eight, he will attend schools which nearly exactly reflect the racial composition of the side of the city in which he lives, no one of which varies greatly from the city-wide student racial composition. No black child will attend a majority black school after he completes the fourth grade, and every black child from the fifth grade through high school will attend schools in which his race is in the minority. Each student, while in grades kindergarten through four, will attend his neighborhood school, and no child in those grades will be exposed to an all-black or all-white school. Only one elementary school, out of thirteen, will be majority black, and only three elementary schools will be less than

10% black. All black children and all white children, from the day they enter school until the day they graduate, will attend integrated schools. Furthermore, any student in any grade who is assigned to a school in which his race is in the majority may attend, if he so desires, another school in which his race is in the majority if space is available at the other school. When the plan outlined above is implemented, the court is of opinion that the last vestiges of state-imposed segregation will be wiped out in the public schools of the City of Danville. *Bradley* v. *School Board of the City of Richmond*, F(2d) (4th Cir. 1972).

An order is this day entered consistent with this opinion.

This 22nd day of August, 1972.

H. E. Widener, Jr.
United States District Judge

Order of United States District Court for the Western District of Virginia, C.A. No. 71-C-44-D, Dated August 22, 1972

This day came the parties to this action, and the court considered the record as a whole and memoranda of counsel, and rendered its opinion in writing.

In accordance with said opinion, it is accordingly ADJUDGED and ORDERED as follows:

I

During the school year 1972-1973, grades K, 1, 2, 3, 4, 5, and 6 of public schools of the City of Danville will be operated in accordance with plans Northside 1 and Southside B as shown by maps which are filed with the record in this proceeding. The court suggests, but does not require, that G.L.H. Johnson be used for grades K-4; that the 5th grade for the north side be at I. W. Taylor; that the 6th grade for the north side be at Woodrow Wilson; and that the 5th and 6th grade school for the south side be at E. A. Gibson.

II

The attendance plan for grades 7, 8 and 9 proposed by the school board is approved by the court.

III

There being no substantial change in the school attendance zones required by this order from the 1971-1972 school year, when public transportation was not furnished without interferring with the quality of education, the school board is not required to furnish transportation for grades K, 1, 2, 3, 4, 7, 8, 9, 10, 11 and 12 except as hereinafter set forth.

For grades 5 and 6, the school board will furnish transportation for students who attend school beyond normal walking distance of their homes. Normal walking distance will be determined by the school board on a case by case basis.

IV

Any student in any school in the City of Danville who is of the majority race in that school may transfer to another school in the City of Danville in which his race is in the minority, subject only to space limitations and such other reasonable administrative regulations as may be prescribed by the school board. Such minority transfer students will be furnished transportation if the school to which they are transferred is beyond normal walking distance of their homes.

V

The attorneys will consult together about attorneys' fees, and if they cannot agree upon the same, an itemized petition for attorneys' fees will be filed within ten days of this date.

Enter this 22nd day of August, 1972.

H. E. Widener, Jr.
United States District Judge

A TRUE COPY, TESTE:
Joyce F. Witt, Clerk

By: Barbara H. Gibson
Deputy Clerk

Order of United States District Court for the Western District of Virginia, C.A. No. 71-C-44-D, Dated August 28, 1972

This day came the defendants by their attorneys upon their petition, duly verified, requesting time to file a school attendance plan for the City of Danville to implement the opinion of the court dated August 22, 1972, the plaintiffs having received notice of the hearing on the petition and having declined to attend.

It appearing to the court that increasing the classroom attendance from 20 to 30 may impair the quality of education in the public schools of the City of Danville which may be eliminated by a short delay in the implementation of the opinion of the court; that the plan, particularly for the south side of Danville, submitted to the court, inadvertently included in the Westmoreland school attendance zone for grades K-4 a number of students who may not be in the proper geographical attendance zone for such school, and that school capacities are somewhat lower than was indicated to the court because of classroom capacities of 30 rather than 20 which prevail throughout the Danville school system generally.

The court is of opinion that a short delay in the implementation of its opinion will serve the best interests of the school system of the City of Danville, without lasting harm to anyone.

It is accordingly ADJUDGED and ORDERED as follows:

I

The School Board of the City of Danville, in carrying out the court's opinion and order of August 22, 1972, is granted sixty days to file a plan for implementing the opinion of the court prior to the expiration of the present term.

II

In the meanwhile, the School Board of the City of Danville is authorized to operate the public schools of said city according to the 1971-72 attendance plan, with modifications for the Junior High Schools in said city which have been suggested during the course of this litigation.

Enter this 25th day of August, 1972.

H. E. Widener, Jr.
United States District Judge

Order of United States District Court for the Western District of Virginia, C.A. No. 71-C-44-D, Dated September 7, 1972

An order was entered in this case August 22, 1972, which was subsequently modified by order of the court entered August 25, 1972. For the purposes of appeal, the court considers the final order in this case to have been entered August 25, 1972, the date of the modification of the order of August 22, 1972, until both plaintiffs' and defendants' motions to alter or amend the judgment and to vacate or amend the judgment were filed August 31, 1972. The court considers, under FRCP 4, the time for appeal will commence running the date of this order.

On August 31, 1972, the plaintiffs filed a motion to alter or amend the judgment of the court, under FRCP 59, referring to the order entered August 22, 1972.

On August 31, 1972, the defendants moved the court to stay the proceedings until a notice of appeal may be filed, and, if so, thereafter until the final disposition of the appeal.

On August 31, 1972, the defendants also filed a motion for a re-hearing, which is styled "Motion to Vacate or Amend Judgment," and the court treats the same as having been filed both under FRCP 52 and FRCP 59. No notice of appeal has been filed.

The effect of the plaintiffs' motion to alter or amend the judgment and the defendants' motion to vacate or amend the judgment is to stop the running of time for filing a notice of appeal.

It is accordingly ADJUDGED and ORDERED as follows:

I

The plaintiffs' motion to alter or amend the judgment shall be, and the same hereby is, overruled.

II

The defendants' motion for a re-hearing or to vacate or amend the judgment shall be, and the same hereby is, overruled.

III

The defendants' motion for a stay of these proceedings pending the filing of a notice of appeal shall be, and the same hereby is, granted, and the effect of the orders of this court entered August 22, 1972 and August 25, 1972 shall be, and they hereby are, stayed for a period of 30 days from this date.

IV

The court declines to pass upon the motion for a stay during the pendency of an appeal and will take up that matter upon the suggestion of the defendants should it become appropriate.

No bond is required for the stay hereby granted.

Enter this 5th day of September, 1972.

H. E. Widener, Jr.
United States District Judge

Order of United States District Court for the Western District of Virginia, C.A. No. 71-C-44-D, Dated October 4, 1972

This day came the defendants in compliance with the order of the court entered August 25, 1972, and filed their plan for implementing the previous opinion of the court in this case. The defendants filed a letter from the School Board of the City of Danville, dated September 25, 1972, a letter from the School Board of the City of Danville, dated October 2, 1972, a statistical analysis showing the racial makeup of each school in the City of Danville, upon implementation of the plan for the balance of the school year 1972-73, and a map showing attendance zones.

The defendants, on September 27, 1972, had filed a notice of this hearing, sending a copy of the same to the plaintiffs' attorneys, but the plaintiffs did not appear in person or by their attorneys.

The court considered the plan to implement the order of the court entered August 25, 1972, and it is ADJUDGED and ORDERED as follows:

I

The plan as to the south side of the Dan River shall be, and the same hereby is, approved.

II

The plan as to the north side of the Dan River shall be, and the same hereby is, approved, except the court does not approve establishing two 5-6 grade centers and requires the School Board to establish a 5th grade and a 6th grade center, or a 5-6 grade center.

III

The School Board having suggested it may be more appropriate to transport those children requiring transportation from their neighborhood schools to the schools they will attend, the School Board is given the option of furnishing transportation in this manner should it so decide.

IV

Implementation of the plan will commence at the beginning of the Christmas holidays and will be completed at or before the beginning of the second school term of the 1972-73 school year.

V

Let copies of this order, the letter of September 25, 1972, the letter of October 2, 1972, and the statistical tables this day filed be certified to counsel of record.

Enter this 2nd day of October, 1972.

H. E. Widener, Jr.
United States District Judge

SOUTHSIDE (Plan 1)

DANVILLE PUBLIC SCHOOLS
DANVILLE, VIRGINIA

	K		1		2		3		4		5		6		SPECIAL ED. PR		SPECIAL ED. IN		GRAND TOTAL			PERCENTAGE	
	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	T	BLACK	WHITE
CEDARBROCK	5	38	3	50	7	65	4	71	1	60									20	284	304	6.58	93.42
SCHOOLFIELD	14	39	17	76	15	69	7	64	16	61					16	23	19	9	104	341	445	23.37	76.63
FOREST HILLS	11	14	21	21	13	25	3	22	8	24									56	106	162	34.57	65.43
GROVE PARK	7	10	12	22	12	17	16	31	12	17									59	97	156	37.82	62.18
BERKELEY	94	14	175	18															269	32	301	89.37	10.63
WESTMORELAND					148	19	165	11	133	14					19				465	44	509	91.36	8.64
																			973	904	1877	51.84	48.16
CEDARBROCK											3	55	3	58									
SCHOOLFIELD											7	55	8	69									
FOREST HILLS											7	42	11	34									
WESTMORELAND											85	25	56	23									
GIBSON											72	16	78	16									
SOUTHSIDE 5-6 CENTER											174	193	156	200			19	1	349	394	743	46.97	53.03
																			1341	1299	2604	50.80	49.20

DANVILLE PUBLIC SCHOOLS
DANVILLE, VIRGINIA

NORTHSIDE (Plan 1)

	K		1		2		3		4		5		6		SPECIAL ED. PR		SPECIAL ED. EH		GRAND TOTAL			PERCENTAGE	
	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	T	BLACK	WHITE
BELLEVUE	12	10	13	19	13	26	12	30	18	22					6	9	9	10	83	126	209	39.71	60.29
WOODBERRY HILLS	2	31	12	55	6	64	7	66	11	61									38	277	315	12.06	87.94
STONEWALL JACKSON	10	25	6	37	6	39	8	50	9	46									39	197	236	16.53	83.47
G. L. H. JOHNSON	9	70	13	97	10	97	14	103	10	113									56	480	536	10.45	89.55
PARK AVENUE	3	17	3	36	11	44	9	45	6	42	5	43							37	227	264	14.02	85.98
WOODBERRY HILLS											2	65											
STONEWALL JACKSON											7	48											
BELLEVUE											14	18											
WOODROW WILSON	13	11	13	30	19	36	12	38	12	37	9	23											
5TH GRADE CENTER	13	11	13	30	19	36	12	38	12	37	32	154							101	306	407	24.82	75.18
WOODROW													12	36									
PARK AVENUE													8	43									
WOODBERRY HILLS													3	71									
STONEWALL JACKSON													11	42									
[illegible]													12	22									
[illegible]											8	97	5	111									
[illegible]											8	27	11	135					59	422	481	12.27	87.73

Memorandum, Opinion and Order of United States District Court for the Western District of Virginia C.A. No. 71-C-44-D, Dated October 24, 1972

This court, by order entered August 22, 1972, as modified August 25, 1972, required certain changes in the assignment of pupils in the public school system of the City of Danville. A part of the changes, which are set forth in full in the plans to implement the court's orders, filed October 2, 1972, consisting of two letters from the School Board to the court, and as further acted on by the court by order entered October 2, 1972, required the transportation of a part of the students in grades 5 and 6 in such school system.

The opinion of the court, entered August 22, 1972, noted that Danville theretofore had placed in effect a system of school attendance zones which were based wholly on geographical considerations and were not discriminatory on account of race. There was also theretofore in effect a minority to majority transfer provision. Not on account of racial discrimination in pupil assignment as it presently existed, but in order to eliminate the last vestiges of a state imposed system of racially segregated schools, the court required the establishment of 5th and 6th grade centers on the north and south sides of the Dan River which divides the city. In order to effect such 5th and 6th grade centers, the School Board would have been required to furnish transportation to a part of the 5th and 6th grade students of the city but to no others. The court declined to require the transportation of any students from kindergarten through the 4th grade, and declined to order the transportation of any students solely to achieve a racial balance in the schools which would approximate the racial composition of the school population as a whole. The School Board had previously

consolidated all high schools into one school for the entire city and had established junior high school attendance zones which, with minor variations, accurately reflected the school population racial balance existing on the north and south sides of the Dan River, respectively.

On August 31, 1972, the plaintiffs filed a motion to amend or alter the decision of the court, FRCP 59.

On August 31, 1972, the defendants filed a motion for rehearing styled "Motion to vacate or amend judgment," which was treated by the court as having been filed both under FRCP 52 and FRCP 59.

On August 31, 1972, the defendants moved the court to stay the proceedings until a notice of appeal may be filed and, if so, thereafter until final disposition of the appeal.

On September 5, 1972, the court entered an order overruling the motion to alter or amend the judgment filed by the plaintiffs and the motion for a rehearing or to vacate or amend the judgment filed by the defendants.

Noting that no notice of appeal had been filed as of September 5, 1972, the court stayed the effect of the orders of the court entered August 22, 1972 and August 25, 1972 until thirty days from September 5, 1972, the date of the entry of the order, and indicated it would take up the matter of a stay during the pendency of an appeal should it become appropriate.

On October 2, 1972, the defendants obviously having decided not to appeal the orders of the court entered August 22, 1972 and August 25, 1972, file with the court their plans for implementing the decision of the court, which were partially approved and partially modified by order of the court entered October 2, 1972.

On October 4, 1972, the plaintiffs filed their notice of appeal, and on October 16, 1972, the defendants filed their

notice of cross-appeal and a motion to stay the proceedings.

The court is of opinion that the motion to stay the proceedings pending the appeals is well taken and ought to be granted for the reasons which are set forth below.

First. While the orders of the court and the plans for implementing the orders of the court, taken together, will not cause any massive disruption of the school system in the City of Danville, the record shows beyond a shadow of a doubt that the School Board of the City of Danville will be required to spend large sums of money to fit its schools in order to physically accommodate the shift in students occasioned by compliance with the orders of this court.

For example, extensive renovation of the cafeteria at Westmoreland School to increase its capacity from 500 or 600 to more than 800 students is required; additional restrooms must be added to Westmoreland School to meet minimum state requirements; a three-story structure on Westmoreland campus which has been closed for two years will require general renovation, which has been verified by the court in its view; a covered walkway must be constructed to connect the various buildings to the cafeteria; and arrangements must be made on the north side of the river for taking care of the K-4 students dislodged by establishing a 5th or 6th grade center.

The court also bears in mind that it has neither the right nor the obligation to interfere with the operation of any public school system unless the school system is being operated in violation of the Constitution or laws of the United States.

While the dollar amounts of money necessary for implementing the orders of the court are not shown in the record, the court takes notice that the revisions in the school accommodations in the Danville school system made necessary by

the orders of the court, which have been partially set out above, would require the expenditure of thousands of dollars of funds. Also, Berkeley School, now presently used, will be closed under the plans of implementation envisioned by the School Board and approved by the court.

Should the plaintiffs prevail in their appeal, it is probable, or at the very least possible, that the changes in the physical accommodations of the school system required by the court's plan will either be unnecessary, or different changes will be made necessary by any future plan which may be required by a court decision different from the one presently proposed. Such contingency would certainly result in an uncalled for waste of public funds which would be to no avail whatsoever. In addition to such waste, the School Board may then be required to expend additional money to meet the provisions of a different court required school attendance plan. In either event, plaintiffs' success in an appeal may very well result in either a single expenditure with no resulting benefit or a double expenditure with a single benefit. In the opinion of the court, such waste of public funds is not required, and it would be an abuse of discretion by this court not to grant the stay requested, independently of the existence of § 803 of Public Law No. 92-318 of the 92nd Congress, Second Session. The court is reinforced in its opinion by the fact that the plaintiffs were offered an opportunity to present oral evidence but declined to do so, leaving the court to decide the matter wholly on the basis of records and the physical makeup of the city involved. The plaintiffs have put the question to the court as squarely as they may that the only way to achieve Constitutional compliance is by a racial distribution of students in each school which reflects the racial school population of the city, or, in the alternative, that transportation of pub-

lic school students, regardless of their age or geographical factors, is necessary from the highest to the lowest grade. The plaintiffs obviously take the position that such transportation of students is mandatory, rather than discretionary, with the district court.

The court considers these hard and fast positions taken by the plaintiffs in the case to be contrary to controlling precedent as has been previously set forth in the opinion of the court.

Second. A stay is required by § 803 of Public Law No. 92-318, 92nd Congress, Second Session.

The plaintiffs take the position that the statute is not applicable in view of *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U.S. 1 (1971), in cases of *de jure* segregation.

> ". . . in the case of any order on the part of any United States district coutr which requires the transfer or transportation of any student or students from any school attendance area prescribed by competent state or local authority for the purposes of achieving a balance among students with respect to race . . . until all appeals in connection with such order have been exhausted or, in the event no appeals are taken, until the time for such appeals has expired. This section shall expire at midnight on January 1, 1974."

The language of the statute is completely unambiguous and a reference to the legislative history, described by the plaintiffs as confused, would be meaningless.

The statute requires a stay of orders of district courts which require the transfer or transportation from any school attendance area prescribed by local school boards if the purpose of the order is to achieve a balance among students with respect to race. The whole purpose of this suit filed

by the plaintiffs, in which they have been partially successful, is to achieve a balance among students with respect to race, which is exactly within the precise wording of the statute. The court is of opinion that the orders of this court previously entered requiring 5th and 6th grade attendance centers on the north and south sides of the Dan River is an order of a district court requiring transfer or transportation of students from school attendance areas prescribed by the Danville School Board for the purpose of achieving a racial balance. The purpose of achieving racial balance, of course, is to eliminate the last vestiges of a state imposed system of segregated schools.

The plaintiffs further contend that if the statute is applicable to this proceeding, then it is invalid as contrary to the 5th and 14th amendments to the Constitution and the doctrine of separation of powers.

Without here examining at length the voluminous Constitutional arguments, especially as to separation of powers, the court is of opinion that Congress may so regulate such proceedings in federal district courts. The amount in controversy is regulated in diversity suits, 28 U.S.C. § 1332, and in some federal question cases, 28 U.S.C. § 1331; district courts may not enjoin the assessment, levy, or collection of taxes under state law where state courts provide a speedy and efficient remedy, 28 U.S.C. § 1341; certain rate orders of state agencies may not be enjoined, 28 U.S.C. § 1342; and the Norris-LaGuardia Act limits the jurisdiction of federal courts in labor disputes. Other examples are legion. No reason is given why Congress should not have the power to require a stay of a district court if it has the power to limit the jurisdiction of district courts.

The court has considered the memorandum submitted by plaintiff and the authorities cited therein. In addition, the

court has considered the following authorities: FRApp. 8; FRCP 62; 3 *Barron & Holtzoff* (Wright ed.), Federal Practice & Procedure, § 1371, et seq., particularly the 1971 supplement; 7 Moore's Federal Practice, § 62.05; *Coppedge v. Franklin County Board of Education* and authorities cited therein, 293 F.Supp. 356 (E.D. N.C. 1968); *Long v. Robinson,* 432 F(2d) 977 (4th Cir. 1970). The court is of opinion that irreparable injury to the defendants would result if defendants were not granted a stay pending appeal in this case, and that little or no harm would result to plaintiffs if the stay is granted. The school system is presently geographically desegregated. The court is further supported in its opinion by the fact that plaintiffs' have been largely successful in their action, and, being unsatisfied, have nevertheless taken an appeal to seek complete success.

Plaintiffs contend that § 803 of the statute does not apply to this case, and, even if it does, that it constitutes an unwarranted intrusion by the Congress into the affairs of the judiciary. The court is of opinion that § 803 by its exact terms is applicable. The court is further of opinion that the section is not an unwarranted intrusion into the judiciary and instead is a Constitutionally permissible Congressional limitation on the powers of this court. The Congressional control of the jurisdiction of lower federal courts is well summarized in *Wright* on Federal Courts (2d ed.) as follows:

> "Congress has considerable discretion in dealing with the jurisdiction of the lower federal courts. It can provide a particular court for hearing certain questions and deny all other courts the power to consider that question, even to the point of precluding raising the invalidity of a regulation as a defense in a criminal action, where there was a court provided in which the invalidity of the regulation might have been asserted.

> Congress can provide that cases within the judicial power shall come to the federal courts, by removal, rather than in their original jurisdiction. *It can take away from the courts power to grant a particular remedy or to enforce a particular kind of contract.*" [Emphasis added.] *Wright* 1970 ed. at 23.

The court has considered *Mapp* v. *The Board of Education,* etc., civil action no. 3564 (D.C. E.D.Tenn., 1972), and agrees with that opinion that § 803 of the statute is applicable, but does not agree with the opinion if it may be construed to require a three-judge court to pass on the validity of the statute under 28 U.S.C. § 2282. The stay sought does not enjoin an Act of Congress.

In conclusion, the court is of opinion that the stay ought to be granted for the following reasons:

1. FRApp. P.8 and FRCP 62 allow a district court to grant a stay in a civil action. The financial change of position on the part of the defendants required by the orders of the court, which would probably be wholly wasted, and certainly partly wasted, if the plaintiffs succeed in their appeal, makes the denial of a stay inequitable.

2. Section 803 of Public Law No. 92-318, 92nd Congress, Second Session, requires a stay.

These reasons for granting a stay are separate and independent of each other, and either supports its issuance. Because of equitable considerations requiring a stay, it should not expire at midnight January 1, 1974.

In accordance with the foregoing, it is accordingly ADJUDGED and ORDERED as follows:

I

The effect of the orders of this court entered August 22, 1972, August 25, 1972, and October 2, 1972 shall be, and they hereby are, stayed until all appeals in connection with such orders have been exhausted.

II

The School Board of the City of Danville having previously placed in effect a minority to majority transfer plan, it is ORDERED that this stay not apply to such transfer plan, which shall remain in full force and effect.

No bond is required for the stay hereby granted.

Enter this 20th day of October, 1972.

H. E. Widener, Jr.
United States District Judge

Opinions of the United States Court of Appeals for the Fourth Circuit, Nos. 72-2373 and 72-2374, Dated August 3, 1973

UNITED STATES COURT OF APPEALS
For the Fourth Circuit

No. 72-2373

CHARLES L. MEDLEY, an infant, by Gracie Medley Hairston and LeRoy Hairston, his mother and step-father and next friends, et al,

Appellants,

versus

THE SCHOOL BOARD OF THE CITY OF DANVILLE, VIRGINIA, et al,

Appellees.

No. 72-2374

CHARLES L. MEDLEY, an infant, by Gracie Medley Hairston and LeRoy Hairston, his mother and step-father and next friends, et al,

Appellees,

versus

THE SCHOOL BOARD OF THE CITY OF DANVILLE, VIRGINIA, et al,

Appellants.

Appeals from the United States District Court for the Western District of Virginia, at Danville. H. E. Widener, Jr., District Judge.

Argued: March 5, 1973 Decided: August 3, 1973

Before HAYNSWORTH, Chief Judge, and WINTER, CRAVEN, BUTZNER, RUSSELL and FIELD, Circuit Judges, sitting en banc.

S. W. Tucker (Henry L. Marsh, III; Hill, Tucker, and Marsh; J. L. Williams; Charles M. L. Mangum; Jack Greenberg; James M. Nabrit, III, and Norman Chachkin on brief) for Appellants in No. 72-2373 and for Appellees in No. 72-2374; G. Kenneth Miller (May, Garrett, Miller and Parsons; Earle Garrett, Jr.; Earle Garrett, III; and Garrett, Garrett and Smith on brief) for Appellees in No. 72-2373 and for Appellants in No. 72-2374.

FIELD, Circuit Judge:

This action was instituted following a direction from the Department of Health, Education and Welfare [HEW] to the Danville Virginia School Board that it review its policy of pupil assignment in the light of *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U. S. 1 (1971). In the absence of a definitive proposal by the school board for 1972-73 the District Court for the Western District of Virginia devised a plan of desegregation which reflected to a large degree the geographical setting of the City which is

divided by the Dan River into areas lying north and south thereof.

The plaintiffs who represent black school children seek to alter or amend the judgment of the District Court, specifically requesting that the Court require the school board to propose a plan which will produce a unitary system or, in the alternative, authorize the plaintiffs to employ a consultant at school board expense to prepare such a plan. In its cross-appeal the school board asserts that there was insufficient evidence to support a finding that it had failed to dismantle its previously segregated system. We find the position of the school board to be untenable and remand for further proceedings.

The history of the Danville school system supports the finding of the District Court that a further dismantling thereof was required. Although the school board stated in 1964 that six of the seventeen schools were integrated, the record indicates that as of that date only twenty-one blacks had transferred to formerly all-white schools, and that the schools in Danville were virtually all-black or all-white. In its May 18, 1965, Statement of Policies and Plan for Compliance with Title VI of the Civil Rights Act of 1964, the school board adopted a freedom of choice plan which was similar to that delineated by the Fifth Circuit in *United States* v. *Jefferson County Board of Education,* 372 F. 2d 836, 897 (5 Cir. 1966).

Thereafter, in 1969, the school board geographically zoned five elementary schools and expanded faculty integration. Under this plan which met with the approval of HEW thirteen of eighteen schools were integrated with seventeen per cent of the black student population attending integrated schools. The following year, 1970-71, the school board adopted a plan which had as its stated objective

that no student would attend an all-black or all-white school. This plan created one high school to be attended by all students in Danville, one junior high school for students living on the north side of the Dan River and two geographically zoned junior high schools on the south side. Elementary schools which had not been zoned in the previous year were either zoned or paired and one all-black elementary school was closed. Under the 1970-71 plan four of the elementary schools had a black enrollment of eight per cent or less. On the other hand, four south side elementary schools had black enrollments ranging from seventy-four per cent to eighty per cent.

The 1970-71 plan was also approved by HEW but, as heretofore stated, in July 1971 the Department advised the school board to review its policy pursuant to *Swann* (402 U. S. 1). The school board responded by rezoning the attendance area of one elementary school and HEW refused to approve the plan with only this one alteration. [It appears that the school board has obtained no further suggestions or directives from HEW.]

The plan which was devised by the District Court without the benefit of substantial guidelines from either the school board or the plaintiffs redrew school attendance zones for grades one through four; ordered busing for students on the respective sides of Dan River to two fifth and sixth grade centers; and changed the feeder schools for the three junior high schools. Aside from the high school, the District Court's plan did not provide for any attendance zone which embraced students living on both sides of the river. The District Court appears to have concluded that such attendance zones would be impracticable since they would require the students to travel in a highly congested and hazardous corridor created by the river and highway during a

time of prime usage by mills and other businesses. Incident to this conclusion it should be noted that the school board does not own or operate a busing system.

Under the Court's plan no child in Danville will attend a school located on the side of the river opposite his home until he enters the high school in the tenth grade. As a result forty-two per cent (734) of the city's 1754 black elementary school children will be enrolled in two schools with black enrollments of eighty-nine per cent and ninety-one per cent, respectively. Additionally, eleven per cent (210) of the black elementary school population will attend five schools with black enrollments of fourteen per cent or less. Counsel for the school board suggest that the plaintiffs' reliance upon the foregoing statistics in their challenge of the plan is, in effect, an insistence that each school should mirror the racial composition of the entire system.

On the record in this case we do not find this characterization of the plaintiffs' position to be a valid one. While the Supreme Court stated in *Swann* that "[t]he constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole," (402 U. S. at 24) the Court made the further observation that

> "Where the school authority's proposed plan for conversion from a dual to a unitary system contemplates the continued existence of some schools that are all or predominately of one race, they have the burden of showing that such school assignments are genuinely nondiscriminatory. The court should scrutinize such schools, and the burden upon the school authorities will be to satisfy the court that their racial composition is not the result of present or past discriminatory action on their part." (402 U.S. at 26).

Reacting to *Swann,* this court in *Adams* v. *School District Number 5, Orangeburg Co., S.C.,* 444 F. 2d 99, 101, noted:

> "Wherever schools are 'all or predominately of one race in a district of mixed population [there will be required] close scrutiny to determine that school assignments are not part of state-enforced segregation.' *Swann, supra,* at 25. . . . Although the existence of 'some small number of one-race, or virtually one-race, schools within a district is not in and of itself the mark of a system which still practices segregation by law,' *Swann, supra,* at 26 . . . , both the school authority and the district judge must nevertheless be concerned with the elimination of one-race schools."

In the light of the history of state-enforced segregation in the Danville schools, the marked residual disparity in the racial balance of the schools under the plan of the District Court strongly suggests that the plan is ineffective to attain an acceptable degree of realistic desegregation.

The nub of the problem in the Danville system is, of course, the Dan River just as Interstate 65 was the divisive factor confronting the Court in *Davis* v. *School Comm'rs of Mobile County,* 402 U. S. 33 (1971). There, the interstate highway divided the metropolitan area of Mobile into definitive eastern and western sections. The schools in the eastern section were sixty-five per cent black and thirty-five per cent white while the western section had an enrollment which was twelve per cent black and eighty-eight per cent white. The elementary school plan approved by the Court of Appeals did not provide for any combination of the schools on the eastern side with the predominantly white schools of the western section with the result that sixty-four per cent of all of the black elementary children attended nine schools on

the east side which were more than ninety per cent black. In remanding the case for the development of a decree "that promises realistically to work, and promises realistically to work *now*,"[1] the Court stated:

> "Like the District Court's plan, the Court of Appeals' plan was based on treating the western section in isolation from the eastern. There were unified geographic zones, and no transportation of students for purposes of desegregation. * * * Having once found a violation, the district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation. A district court may and should consider the use of all available techniques including restructuring of attendance zones and both contiguous and noncontiguous attendance zones. See *Swann, supra*, at 22-31. The measure of any desegregation plan is its effectiveness.
>
> "On the record before us, it is clear that the Court of Appeals felt constrained to treat the eastern part of metropolitan Mobile in isolation from the rest of the school system, and that inadequate consideration was given to the possible use of bus transportation and split zoning." (402 U.S. at 33 at 36, 37, 38).

The situation in Danville is strikingly parallel to *Davis*. There are seven elementary schools on the north side of the river with a student population which is eighty-seven per cent white and thirteen per cent black. There are also seven elementary schools on the south side of the river with an enrollment which is fifty-four percent white and forty-six per cent black. The over-all population of elementary students in the system is sixty-nine per cent white and thirty-

[1] Green v. County School Board, 391 U. S. 430, 439 (1968).

one per cent black. In the light of these statistics we are of the opinion that the District Court fell into the same error as the lower court in *Davis* in formulating a plan which treated the two sections of the city in isolation one from the other and which resulted in a number of schools which are racially identifiable when measured by any reasonable gauge. It appears that the District Court recognized this fact when he stated in his opinion that under the plan the fifth and sixth grades as well as the junior high schools would "reflect the black-white ratios of students on each side of the river."

It is clear that the District Court felt that the circumstances prevailing in Danville warranted the retention of neighborhood elementary schools on each side of the river. In *Thompson* v. *School Board of City of Newport News, Va.*, 465 F. 2d 83 (4 Cir. 1972), we recognized that under proper circumstances the assignment of the primary grades to neighborhood schools is not *per se* unacceptable, but we emphasized that such assignments must rest upon specific findings which demonstrate that no other plan affording greater integration is practicable. The record in the present case reveals no problem with respect to either the time or distance of travel incident to the utilization of noncontiguous attendance zones embracing elementary students on both sides of the river. Illustrative of this fact, the record indicates that the distance between Woodberry Hills Elementary School on the north side and Westmoreland and Berkeley schools on the south is a minimal one mile, and three of the city's five bridges lie within these attendance zones. Under the Court's plan, however, Woodberry Hills would have a student population that is eighty-eight per cent white while Berkeley and Westmoreland would have black enrollments of eighty-nine and ninety-eight per cent, respectively.

It would seem that the primary emphasis of the District Court's conclusion of impracticability rests upon the assumption that the elementary children would be required to walk across the bridges which concededly are inadequate for pedestrian traffic. We think that in reaching this conclusion the District Court failed to fully consider and develop the possibility of transportation for these children. Again adverting to *Davis,* we feel that the Court failed to give appropriate consideration to the "possible use of bus transportation and split zoning" to solve the geographical problem which confronted it. The school board's present lack of transportation facilities is not controlling. If reassignment is constitutionally mandated the district court's equity power includes the authority to require transportation when it is necessary to disestablish a dual school system. *See Brewer* v. *School Board of City of Norfolk, Virginia,* 456 F. 2d 943, 947 (4 Cir. 1972).

Following the *Swann* and *Davis* decisions, in *Adams* we remanded several cases to the respective district courts with the admonition that "[t]he school authorities and the district court should consider the use of all techniques for desegregation, including pairing or grouping of schools, noncontiguous attendance zones, restructuring of grade levels, and the transportation of pupils." (444 F. 2d at 101). Our review of the record indicates that similar action is appropriate in the present case. To that end, we remand the case to the District Court with the following instructions: (1) The school board shall submit to the District Court a plan for the elementary and junior high schools which will effectuate the mandates of *Swann* and *Davis,* giving full consideration to the techniques set forth in *Adams;* (2) the District Court may direct the school board to consider the services of an expert or the office of HEW to assist it in

drafting an acceptable plan; (3) the District Court shall conduct a hearing to determine the effectiveness of the proposed plan and may hear objections or proposed amendments prior to his approval thereof; (4) if the District Court should find that the plan of the school board does not fully implement *Swann* and *Davis,* he may use a consultant to develop a plan and assess the consultant's reasonable fee against the school board.

The plaintiffs have requested attorneys' fees and upon the remand the District Court shall make a reasonable allowance for such fees pursuant to Section 718 of the Emergency School Aid Act of 1972 for services rendered herein subsequent to June 30, 1972. *Northcross v. Memphis Board of Education,* 41 U. S. L. W. 3635 (U.S. June 4, 1973); *Scott* v. *Winston-Salem/Forsyth County Board of Education,* No. 72-2162 (4 Cir. April 30, 1973); *Shepard* v. *Fayetteville City Board of Education,* No. 2278 (4 Cir. April 30, 1973).

REMANDED WITH DIRECTIONS.

WINTER, Circuit Judge, concurring and dissenting:

I concur in the judgment and opinion of the court except with respect to the allowance of counsel fees. I adhere to the view I expressed in Bradley v. Richmond School Board, 472 F.2d 318 (4 Cir. 1971), cert. granted, U.S. (June 12, 1973), and I would direct an allowance for all services rendered since July 30, 1971, the date on which the current phase of the litigation was begun.

Judgment of United States Court of Appeals for the Fourth Circuit, No. 72-2373, Dated August 3, 1973

Charlie L. Medley, an infant, by Gracie Medley Hairston and LeRoy Hairston, his mother and stepfather and next friends; Danny W. Edmunds and Bobby J. Edmunds, infants, by St. Clair Edmunds, their father and next friend; Carl Whippee and Angela Whippee, infants, by Sarah W. Whippee, their mother and next friend; James Ford, Charles Ford and Julia Ford, infants, by Mary W. Ford, their mother and next friend; et als.,

Appellants,

vs.

The School Board of the City of Danville, Virginia and Zane E. Eargle, Division Superintendent,

Appellees.

APPEAL FROM the United States District Court for the Western District of Virginia.

THIS CAUSE came on to be heard on the record from the United States District Court for the Western District of Virginia, and was argued by counsel.

ON CONSIDERATION whereof, It is now here ordered and adjudged by this Court that the case is remanded to the United States District Court for the Western District of Virginia, at Danville, with directions consistent with the opinion of this Court filed herewith. The District Court shall make a reasonable allowance for attorneys' fees to the plaintiffs, Charlie L. Medley, etc., et als, pursuant to Section 718 of the Emergency School Aid Act of 1972 for services rendered herein subsequent to June 30, 1972.

Filed Aug. 3, 1973, William K. Slate, II, Clerk.

William K. Slate, II
Clerk

Judgment of United States Court of Appeals for the Fourth Circuit, No. 72-2373, Dated August 3, 1973

Charlie L. Medley, an infant, by Gracie Medley Hairston and LeRoy Hairston, his mother and stepfather and next friends; Danny W. Edmunds and Bobby J. Edmunds, infants, by St. Clair Edmunds, their father and next friend; Carl Whippee and Angela Whippee, infants, by Sarah W. Whippee, their mother and next friend; James Ford, Charles Ford and Julia Ford, infants, by Mary W. Ford, their mother and next friend; et als.,

Appellees,

vs.

The School Board of the City of Danville, Virginia and Zane E. Eargle, Division Superintendent,

Appellants.

APPEAL FROM the United States District Court for the Western District of Virginia.

THIS CAUSE came on to be heard on the record from the United States District Court for the Western District of Virginia, and was argued by counsel.

ON CONSIDERATION whereof, It is now here ordered and adjudged by this Court that the case is remanded to the United States District Court for the Western District of Virginia, at Danville, with directions consistent with the opinion of this Court filed herewith. The District Court shall make a reasonable allowance for attorneys' fees to the plaintiffs, Charlie L. Medley, etc., et als., pursuant to Section 718 of the Emergency School Aid Act of 1972 for services rendered herein subsequent to June 30, 1972.

Filed Aug. 3, 1973, William K. Slate, II, Clerk.

William K. Slate, II
Clerk

Order of United States Court of Appeals for the Fourth Circuit, Nos. 72-2373 and 72-2374, Dated August 14, 1973

Upon consideration of the motion of Charles L. Medley, et al, that the mandate issue forthwith, in the above-captioned cases,

IT IS ORDERED that the motion be and is hereby DENIED.

Judges Craven and Butzner did not participate in this motion due to their absence from the Circuit. Judge Widener did not participate in the decision of these cases nor in the disposition of said motion. Judge Winter would grant the motion.

For the Court—by Direction.

/s/ William K. Slate, II
Clerk

Order Denying Rehearing In Banc of United States Court of Appeals for the Fourth Circuit, Nos. 72-2373 and 72-2374, Dated September 12, 1973

This case having originally been heard in banc, and a majority of the court having voted to deny the petition for rehearing, it is ADJUDGED AND ORDERED that the petition is denied.

/s/ John A. Field, Jr.
United States Circuit Judge

Order Denying Stay of Mandate of United States Court of Appeals for the Fourth Circuit, Nos. 72-2373 and 72-2374, Dated October 11, 1973

Upon consideration of the motion of Charles L. Medley, et al, for a stay of the mandate pending application to the United States Supreme Court for a writ of certiorari, in the above-captioned cases, and in accordance with *Alexander* v. *Holmes County Bd. of Ed.*, 396 U. S. 19 (1969), and *Carter* v. *West Feliciana Parish School Bd.*, 396 U. S. 226 (1969),

IT IS ORDERED that the motion be and is hereby DENIED.

The Court calls attention to the fact that if preparation of a plan to effect a unitary system of schools goes forward to the point of requiring the expenditure of capital sums to implement it before the Supreme Court has acted upon an application for further review, defendants, if they be so advised, may seek a stay of further implementation from the Supreme Court, or a Circuit Justice. Defendants may, of course, also seek a stay from the Supreme Court, or a Circuit Justice, at any time earlier.

FOR THE COURT:

/s/ Clement F. Haynsworth, Jr.
Chief Judge, U. S. Court of Appeals

SCHOOL BUILDING INFORMA)N

Name of School John M. Langston Jr. High School Address Cleveland Street, Danville, Virginia

Name of Principal Mrs. Vera B. Murphy Address 238 Cleveland Street

Grades in School 7-9 Maximum Building Capacity 800

	1969 - 70 White	1969 - 70 Negro	1970 - 71 White	1970 - 71 Negro	1971 - 72 White	1971 - 72 Negro
Number of Teachers	4	35	19	14	20	12
Other Professional Personnel	0	4	2	3	2	3
Pupil - Teacher Ratio	1969 - 70 18		1970 - 71 16		1971 - 72 15	
Average Class Size	20		18		18	

Enrollment by Grades

1969 - 70

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
				0	236	0	242	0	158	0	148	0	784

1970 - 71

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
123	65	137	72	18* 108	27* 59							386	223

1971 - 72

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
99	80	128	73	122	66							349	219

Additions - Dates Erected 1958; Addition 1964

SCHOOL BUILDING INFORMA ON

Name of School George Washington High School Address Broad Street, Danville, Virginia

Name of Principal E. L. Motley Address 130 Canterbury Road

Grades in School 10-12 Maximum Building Capacity 2000

	1969 - 70 White	1969 - 70 Negro	1970 - 71 White	1970 - 71 Negro	1971 - 72 White	1971 - 72 Negro
Number of Teachers	102	2	87	21	87	23
Other Professional Personnel	10	0	9	2	9	2

	1969 - 70	1970 - 71	1971 - 72
Pupil - Teacher Ratio	20	19	18
Average Class Size	22	21	20

Enrollment by Grades

1969 - 70

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
				637	45	584	39	443	33	519	15	2183	134

1970 - 71

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
						603	285	497	230	433	166	1533	681

1971 - 72

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
						623	304	436	186	485	192	1544	682

Additions - Dates Erected 1957; Addition 1960 and 1963

SCHOOL BUILDING INFORMATION

Name of School O. Trent Bonner Jr. High School Address Apollo Avenue Danville, Virginia

Name of Principal L. Gordon Norburn Address 125 Dublin Court

Grades in School 7-9 Maximum Building Capacity 1200

	1969 - 70 White	1969 - 70 Negro	1970 - 71 White	1970 - 71 Negro	1971 - 72 White	1971 - 72 Negro
Number of Teachers			39	18	38	20
Other Professional Personnel			6	2	7	1
Pupil - Teacher Ratio	1969 - 70		1970 - 71 20		1971 - 72 19	
Average Class Size			22		21	

Enrollment by Grades

1969 - 70

1st W	1st N	2nd W	2nd N	3rd W	3rd N	4th W	4th N	5th W	5th N	6th W	6th N	Total W	Total N

7th W	7th N	8th W	8th N	9th W	9th N	10th W	10th N	11th W	11th N	12th W	12th N	Total W	Total N

1970 - 71

1st W	1st N	2nd W	2nd N	3rd W	3rd N	4th W	4th N	5th W	5th N	6th W	6th N	Total W	Total N

7th W	7th N	8th W	8th N	9th W	9th N	10th W	10th N	11th W	11th N	12th W	12th N	Total W	Total N
347	82	360	82	314 (9* 6*)	78							1030	248

1971 - 72

1st W	1st N	2nd W	2nd N	3rd W	3rd N	4th W	4th N	5th W	5th N	6th W	6th N	Total W	Total N

7th W	7th N	8th W	8th N	9th W	9th N	10th W	10th N	11th W	11th N	12th W	12th N	Total W	Total N
319	72	337	79	19* 17* 326	71							1001	239

Additions - Dates Erected 1970

SCHOOL BUILDING INFORMATION

Name of School Robert E. Lee Jr. High School Address Holbrook Avenue, Danville, Virginia

Name of Principal Roy H. Hodge, Jr. Address 157 Marshall Terrace

Grades in School 7-9 Maximum Building Capacity 815

	1969 - 70 White	1969 - 70 Negro	1970 - 71 White	1970 - 71 Negro	1971 - 72 White	1971 - 72 Negro
Number of Teachers	37	2	28	11	29.5	10.5
Other Professional Personnel	3	0	3	1	3.5	1.5
	1969 - 70		1970 - 71		1971 - 72	
Pupil - Teacher Ratio	22		18		16	
Average Class Size	24		20		18	

Enrollment by Grades

1969 - 70

1st W	1st N	2nd W	2nd N	3rd W	3rd N	4th W	4th N	5th W	5th N	6th W	6th N	Total W	Total N
7th W	7th N	8th W	8th N	9th W	9th N	10th W	10th N	11th W	11th N	12th W	12th N	Total W	Total N
424	45	396	25* 41 6*									845	92

1970 - 71

1st W	1st N	2nd W	2nd N	3rd W	3rd N	4th W	4th N	5th W	5th N	6th W	6th N	Total W	Total N
7th W	7th N	8th W	8th N	9th W	9th N	10th W	10th N	11th W	11th N	12th W	12th N	Total W	Total N
148	110	145	100	17* 136	26* 97							446	333

1971 - 72

1st W	1st N	2nd W	2nd N	3rd W	3rd N	4th W	4th N	5th W	5th N	6th W	6th N	Total W	Total N
7th W	7th N	8th W	8th N	9th W	9th N	10th W	10th N	11th W	11th N	12th W	12th N	Total W	Total N
99	104	135	112	18* 118	29* 97							370	342

Additions - Dates Erected 1909; Additions 1926 and 1953

SCHOOL BUILDING INFORMATION

Name of School Bellevue School Address Bellevue Street, Danville, Virginia

Name of Principal Mrs. Nancye H. Donahoe Address 343 Southland Drive

Grades in School 1-6 Maximum Building Capacity 375

	1969 - 70 White	1969 - 70 Negro	1970 - 71 White	1970 - 71 Negro	1971 - 72 White	1971 - 72 Negro
Number of Teachers	11	2	7	4	8	5
Other Professional Personnel	2	0	2	0	2	0
Pupil - Teacher Ratio	1969 - 70		1970 - 71		1971 - 72	
	20		18		18	
Average Class Size	23		20		21	

Enrollment by Grades

1969 - 70

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
48	3	38	10	44	6	48	5	34	6	14* 37	4	263	34
7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

1970 - 71

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
35	15	24	11	20	18	24	14	24	12	19	12	146	82
7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

1971 - 72

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
38	23	38	15	32	19	18	17	24	11	8* 17	5* 11	175	101
7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

Additions - Dates Erected 1990; Additions - 1956

SCHOOL BUILDING INFORMATION

Name of School Cedarbrook School Address Cedarbrook Drive, Danville, Virginia

Name of Principal Robert D. Chandler Address 132 Winston Road

Grades in School 1-6 Maximum Building Capacity 425

	1969 - 70 White	1969 - 70 Negro	1970 - 71 White	1970 - 71 Negro	1971 - 72 White	1971 - 72 Negro
Number of Teachers	13	1	10	5	10	5
Other Professional Personnel	2	0	2	0	2	0
Pupil - Teacher Ratio	1969 - 70: 25		1970 - 71: 23		1971 - 72: 24	
Average Class Size	28		26		27	

Enrollment by Grades

1969 - 70

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
72	3	61	3	66	3	57	4	56	4	57	7	369	24

7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

1970 - 71

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
79	3	67	0	57	2	64	4	59	4	52	6	378	19

7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

1971 - 72

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
69	6	80	3	63	0	60	3	62	3	58	5	392	20

7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

Additions - Dates Erected 1962; Addition 1969

SCHOOL BUILDING INFORMA ON

Name of School Edwin A. Gibson Address Industrial Avenue , Danville, Va.

Name of Principal Robert W. Haskins Address 316 Melrose Drive, Danville, Va.

Grades in School 3 - 6 Maximum Building Capacity 960

	1969 - 70		1970 - 71		1971 - 72	
	White	Negro	White	Negro	White	Negro
Number of Teachers	3	24	15	7	15	6
Other Professional Personnel	0	2	1	1	2	0
Pupil - Teacher Ratio	1969 - 70		1970 - 71		1971 - 72	
	22		17		17	
Average Class Size	24		19		19	

Enrollment by Grades

1969 - 70

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
0	137	0	106	0	105	0	101	0	95	0	25* 80	0	649

7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

1970 - 71

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
				20	76	26	74	30	79	0* 21	10* 75	97	314

7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

1971 - 72

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
				22	70	18	82	19	73	2* 22	23* 63	83	311

7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

Dates Erected 1952 - Additions 1956 & 1962 *Special Education

Name of School Forest Hills Address Mt. View Avenue, Danville, Va.

Name of Principal Joseph S. Donahoe Address 343 Southland Dr., Danville, Va.

Grades in School 1 - 6 Maximum Building Capacity 360

	1969 - 70 White	1969 - 70 Negro	1970 - 71 White	1970 - 71 Negro	1971 - 72 White	1971 - 72 Negro
Number of Teachers	11	1	8	4	8	4
Other Professional Personnel	2	0	2	0	2	0
Pupil - Teacher Ratio	1969 - 70 22		1970 - 71 21		1971 - 72 19	
Average Class Size	26		24		22	

Enrollment by Grades

1969 - 70

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
40	6	49	4	43	5	46	4	47	7	55	2	280	29

7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

1970 - 71

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
27	14	35	7	51	8	35	9	40	10	42	10	230	58

7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

1971 - 72

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
25	14	23	7	29	12	42	9	34	12	39	8	192	62

7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

Additions - Dates Erected 1934

SCHOOL BUILDING INFORMA. ON

Name of School G.L.H. Johnson Address Arnett Blvd., Danville, Va.

Name of Principal Bernard M. Ladd Address 139 Clarendon Cir., Danville, Va.

Grades in School 1 - 4 Maximum Building Capacity 665

	1969 - 70 White	1969 - 70 Negro	1970 - 71 White	1970 - 71 Negro	1971 - 72 White	1971 - 72 Negro
Number of Teachers	26	2	15	7	14	6
Other Professional Personnel	2	0	2	0	2	0
Pupil - Teacher Ratio	1969 - 70 27		1970 - 71 22		1971 - 72 23	
Average Class Size	29		24		25	

Enrollment by Grades

1969 - 70

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
150	0	112	0	123	0	140	0	146	0	130	1	801	1

7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

1970 - 71

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
122	13	127	13	115	8	124	7					488	41

7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

1971 - 72

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
110	12	111	13	123	8	113	8					457	41

7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

Addition 1956 & 1965

SCHOOL BUILDING INFORMATION

Name of School Grove Park Address S. Main St., Danville, Va.

Name of Principal Mrs. Dorothy Harris Address 975 Piney Forest Rd., Danville, Va.

Grades in School 1 - 2 Maximum Building Capacity 300

	1969 - 70 White	1969 - 70 Negro	1970 - 71 White	1970 - 71 Negro	1971 - 72 White	1971 - 72 Necro
Number of Teachers	10	1	8	3	8	3
Other Professional Personnel	1	0	1	1	0	2
Pupil - Teacher Ratio	1969 - 70 21		1970 - 71 19		1971 - 72 21	
Average Class Size	23		24		24	

Enrollment by Grades

1969 - 70

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
40	1	48	1	39	1	40	2	31	1	46	1	244	7

7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

1970 - 71

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
28	99	28	93									56	192

7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

1971 - 72

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
23	108	31	105									54	213

7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

Date Erected 1955

SCHOOL BUILDING INFORMATION

Name of School Irvin W. Taylor School Address Piney Forest Road, Danville, Virginia

Name of Principal Thomas D. Shavers Address 939 Piney Forest Road

Grades in School 5-6 Maximum Building Capacity 540

	1969 - 70 White	1969 - 70 Negro	1970 - 71 White	1970 - 71 Negro	1971 - 72 White	1971 - 72 Negro
Number of Teachers	0	13	9	3	9	2
Other Professional Personnel	0	2	0	2	0	2
Pupil - Teacher Ratio	1969 - 70		1970 - 71		1971 - 72	
	13		21		20	
Average Class Size	16		25		24	

Enrollment by Grades

1969 - 70

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
0	21	0	16	0	17	0	15	0	21	0	30		
7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
0	39	0	43									0	202

1970 - 71

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
								135	9	140	15	275	24
7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

1971 - 72

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
								115	4	131	12	246	16
7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

* 1972- Addition 1956

SCHOOL BUILDING INFORMATION

Name of School John L. Berkeley School Address Grove Street Danville, Virginia

Name of Principal Ronald W. Hutchinson Address 337-A Hermitage Drive

Grades in School 1-3 Maximum Building Capacity 330

	1969 - 70 White	1969 - 70 Negro	1970 - 71 White	1970 - 71 Negro	1971 - 72 White	1971 - 72 Negro
Number of Teachers	9	3	11	3	10	4
Other Professional Personnel	2	0	2	0	2	0
Pupil - Teacher Ratio	1969 - 70: 19		1970 - 71: 19		1971 - 72: 19	
Average Class Size	23		22		21	

Enrollment by Grades

1969 - 70

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
42	8	41	7	39	7	30	12	29	10	44	3	225	47

7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

1970 - 71

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
21	81	32	79	26	67							79	227

7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

1971 - 72

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
29	82	14	84	22	65							65	231

7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

SCHOOL BUILDING INFORMATION

Name of School Park Avenue School Address Park Avenue, Danville, Virginia

Name of Principal Miss Betsy Robertson Address 163 Marshall Terrace

Grades in School 1-6 Maximum Building Capacity 330

	1969 - 70 White	1969 - 70 Negro	1970 - 71 White	1970 - 71 Negro	1971 - 72 White	1971 - 72 Negro
Number of Teachers	10	2	8	4	8	4
Other Professional Personnel	2	0	2	0	2	0
Pupil - Teacher Ratio	1969 - 70		1970 - 71		1971 - 72	
	23		22		22	
Average Class Size	26		26		26	

Enrollment by Grades

1969 - 70

1st W	1st N	2nd W	2nd N	3rd W	3rd N	4th W	4th N	5th W	5th N	6th W	6th N	Total W	Total N
38	11	44	13	41	6	52	16	35	10	36	10	246	66

7th W	7th N	8th W	8th N	9th W	9th N	10th W	10th N	11th W	11th N	12th W	12th N	Total W	Total N

1970 - 71

1st W	1st N	2nd W	2nd N	3rd W	3rd N	4th W	4th N	5th W	5th N	6th W	6th N	Total W	Total N
35	13	43	10	44	7	44	9	51	10	31	11	248	60

7th W	7th N	8th W	8th N	9th W	9th N	10th W	10th N	11th W	11th N	12th W	12th N	Total W	Total N

1971 - 72

1st W	1st N	2nd W	2nd N	3rd W	3rd N	4th W	4th N	5th W	5th N	6th W	6th N	Total W	Total N
39	10	43	7	42	7	42	4	43	9	52	11	261	48

7th W	7th N	8th W	8th N	9th W	9th N	10th W	10th N	11th W	11th N	12th W	12th N	Total W	Total N

Date Erected 1957; Addition 1969

SCHOOL BUILDING INFORMATION

Name of School Schoolfield Address Baltimore Ave., Danville

Name of Principal Miss Mildred Slayton Address 725 N. Main St., Danville

Grades in School 1-6 Maximum Building Capacity 680

	1969 - 70 White	1969 - 70 Negro	1970 - 71 White	1970 - 71 Negro	1971 - 72 White	1971 - 72 Negro
Number of Teachers	17	1	14	5	16	5
Other Professional Personnel	2	0	2	0	2	0
Pupil - Teacher Ratio	1969 - 70: 23		1970 - 71: 23		1971 - 72: 22	
Average Class Size	25		25		24	

Enrollment by Grades

1969 - 70

1st W	1st N	2nd W	2nd N	3rd W	3rd N	4th W	4th N	5th W	5th N	6th W	6th N	Total W	Total N
77	0	55	0	76	0	80	0	57	0	41* 62	1* 0	448	1

7th W	7th N	8th W	8th N	9th W	9th N	10th W	10th N	11th W	11th N	12th W	12th N	Total W	Total N

1970 - 71

1st W	1st N	2nd W	2nd N	3rd W	3rd N	4th W	4th N	5th W	5th N	6th W	6th N	Total W	Total N
78	4	70	10	58	6	75	10	64	13	33* 49	2* 8	427	53

7th W	7th N	8th W	8th N	9th W	9th N	10th W	10th N	11th W	11th N	12th W	12th N	Total W	Total N

1971 - 72

1st W	1st N	2nd W	2nd N	3rd W	3rd N	4th W	4th N	5th W	5th N	6th W	6th N	Total W	Total N
76	15	70	4	71	14	54	4	71	8	29* 65	8* 9	438	62

7th W	7th N	8th W	8th N	9th W	9th N	10th W	10th N	11th W	11th N	12th W	12th N	Total W	Total N

Additions - Dates Erected 1919 - Additions 1936, 1939 *Special Education

SCHOOL BUILDING INFORMATION

Name of School Stonewall Jackson School Address North Main Street Danville, Virginia

Name of Principal N. A. Witcher, Jr. Address 1213 Greenwood Drive

Grades in School 1-6 Maximum Building Capacity 480

	1969 - 70 White	1969 - 70 Negro	1970 - 71 White	1970 - 71 Negro	1971 - 72 White	1971 - 72 Negro
Number of Teachers	15	1	10	4	10	4
Other Professional Personnel	2	0	2	0	2	0
Pupil - Teacher Ratio	1969 - 70 23		1970 - 71 20		1971 - 72 19	
Average Class Size	26		23		22	

Enrollment by Grades

1969 - 70

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
74	6	69	5	74	4	59	0	60	1	60	4	396	20
7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

1970 - 71

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
46	8	53	18	46	20	35	8	37	9	23	16	240	79
7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

1971 - 72

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
37	7	51	9	45	12	41	12	43	13	36	4	253	57
7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

Additions - Dates Erected 1915; Addition 1953

SCHOOL BUILDING INFORMATION

Name of School Westmoreland School Address Gay Street, Danville, Virginia

Name of Principal Frank Cuthrell Address 214 Howeland Circle

Grades in School 4-6 Maximum Building Capacity 950

	1969 - 70 White	1969 - 70 Negro	1970 - 71 White	1970 - 71 Negro	1971 - 72 White	1971 - 72 Negro
Number of Teachers	2	32	10	7	9	7
Other Professional Personnel	0	3	2	0	2	0
Pupil - Teacher Ratio	1969 - 70: 21		1970 - 71: 18		1971 - 72: 18	
Average Class Size	22		20		20	

Enrollment by Grades

1969 - 70

1st W	1st N	2nd W	2nd N	3rd W	3rd N	4th W	4th N	5th W	5th N	6th W	6th N	Total W	Total N
0	60	0	62	0	50	0	51	0	74	0	69		

7th W	7th N	8th W	8th N	9th W	9th N	10th W	10th N	11th W	11th N	12th W	12th N	Total W	Total N
0	166	0	71* 157									0	760

1970 - 71

1st W	1st N	2nd W	2nd N	3rd W	3rd N	4th W	4th N	5th W	5th N	6th W	6th N	Total W	Total N
						28	59	27	78	3* 37	31* 73	95	241

7th W	7th N	8th W	8th N	9th W	9th N	10th W	10th N	11th W	11th N	12th W	12th N	Total W	Total N

1971 - 72

1st W	1st N	2nd W	2nd N	3rd W	3rd N	4th W	4th N	5th W	5th N	6th W	6th N	Total W	Total N
						27	81	34	57	2* 21	34 * 70	84	242

7th W	7th N	8th W	8th N	9th W	9th N	10th W	10th N	11th W	11th N	12th W	12th N	Total W	Total N

Additions - Dates Erected 1925; Addition 1964

SCHOOL BUILDING INFORMATION

Name of School William F. Grasty Address New Street, Danville, Virginia

Name of Principal _____ Address _____

Grades in School _____ Maximum Building Capacity 325

Not in operation since June, 1970

	1969 - 70 White	1969 - 70 Negro	1970 - 71 White	1970 - 71 Negro	1971 - 72 White	1971 - 72 Negro
Number of Teachers	0	8				
Other Professional Personnel	0	2				
Pupil - Teacher Ratio	1969 - 70: 19		1970 - 71		1971 - 72	
Average Class Size	24					

Enrollment by Grades

1969 - 70

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
0	33	0	35	0	23	0	24	0	29	0	17* 32	0	193

7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

1970 - 71

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

1971 - 72

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

Additions - Dates Erected 1932; Addition 1953 and 1961

SCHOOL BUILDING INFORMATION

Name of School Woodberry Hills Schools Address Audubon Drive, Danville, Virginia

Name of Principal Mrs. Avis D. Whitlow Address 526 Crestview Drive,

Grades in School 1-6 Maximum Building Capacity 480

	1969 - 70 White	1969 - 70 Negro	1970 - 71 White	1970 - 71 Negro	1971 - 72 White	1971 - 72 Negro
Number of Teachers	16	1	12	5	12	5
Other Professional Personnel	2	0	2	0	2	0
Pupil - Teacher Ratio	1969 - 70: 22		1970 - 71: 21		1971 - 72: 23	
Average Class Size	25		24		26	

Enrollment by Grades

1969 - 70

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
72	2	63	3	75	3	72	0	52	1	74	3	408	12

7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

1970 - 71

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
71	1	67	2	63	0	72	0	73	0	54	1	400	4

7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

1971 - 72

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
72	6	61	8	64	5	62	5	70	6	75	2	404	32

7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

Additions - Dates Erected 1959; Addition 1960 and 1963

SCHOOL BUILDING INFORMATION

Name of School Woodrow Wilson School Address N. Main at Benefield, Danville, Va.

Name of Principal David O. Crews Address 110 Fairlawn Drive

Grades in School 1-6 Maximum Building Capacity 600

	1969 - 70 White	1969 - 70 Negro	1970 - 71 White	1970 - 71 Negro	1971 - 72 White	1971 - 72 Negro
Number of Teachers	21	2	9	4	10	4
Other Professional Personnel	4	0	0	2	0	2
Pupil - Teacher Ratio	1969 - 70 20		1970 - 71 24		1971 - 72 21	
Average Class Size	23		28		24	

Enrollment by Grades

1969 - 70

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
246	22	242	23									488	45

1970 - 71

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
43	22	41	22	34	15	41	15	47	15	7* 38	10* 17	251	116
7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

1971 - 72

1st		2nd		3rd		4th		5th		6th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N
44	15	35	14	36	14	28	11	42	10	19* 47	11* 16	251	91
7th		8th		9th		10th		11th		12th		Total	
W	N	W	N	W	N	W	N	W	N	W	N	W	N

Additions - Dates Erected 1926; Additions 1934 and 1964

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-707

THE SCHOOL BOARD OF THE CITY OF DANVILLE, VIRGINIA, *et al.*,
Petitioners,

vs.

CHARLES L. MEDLEY, *et al.*

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION TO CERTIORARI

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Opinions Below

The August 3, 1973 opinion of the Court of Appeals for the Fourth Circuit, and the concurring and dissenting opinion of Judge Winter, are now reported at 482 F.2d 1061.

Question Presented

Did the Court of Appeals or the district court err in requiring Danville to devise and implement an effective pupil desegregation plan including reassignment of elementary school students across the Dan River, with transportation as necessary, since the geographic zoning plan adopted by the school district in 1970 had left many schools in this small system with racial compositions which were substantially disproportionate to that of the entire district?

Reasons Why the Writ Should Be Denied

This is a startlingly simple case. It involves a small school district divided by the Dan River and a federal district court, both of which (despite this Court's decisions in *Swann*[1] and *Davis*[2]) sought to characterize demands for effective school desegregation as efforts to achieve "racial balance," and to make the river an impassable barrier to constitutional elementary school integration. The United States Court of Appeals for the Fourth Circuit, which in the past has been sharply divided on many school desegregation issues,[3] was unanimous in this case[4] in requiring that Danville at long last complete the process of desegregating its schools.

The Danville School Board's attempt to create serious constitutional issues where there are none must fail. This case involves a historically dual system, like Charlotte, and the issue presented to both the district court and the Court of Appeals was: has Danville taken effective measures to eliminate its former mandated segregation and the effects thereof? *Cf. Green* v. *County School Bd. of New Kent County,* 391 U.S. 430 (1968). The district court agreed that, when the case first came before it in 1971, schools of substantially disproportionate racial composition (when compared to the system-wide distribution of black and

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[1] *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.,* 402 U.S. 1 (1971).

[2] *Davis* v. *Board of School Comm'rs of Mobile,* 402 U.S. 33 (1971).

[3] See, *e.g., Swann* v. *Charlotte-Mecklenburg Bd. of Educ.,* 431 F.2d 138 (1970), *rev'd in part,* 402 U.S. 1 (1971); *Council of the City of Emporia* v. *Wright,* 442 F.2d 570, 588 (1971), *rev'd* 407 U.S. 451 (1972).

[4] The partial dissenting opinion of Judge Winter did not concern the issue of student assignment.

white students) remained despite the availability of remedial measures to eliminate them. The district court accordingly required creation of 5-6 grade centers on either side of the Dan River.

However, the district court stopped short of completely eliminating disproportionate schools by assigning elementary students across the Dan River (despite the fact that some schools of differing racial composition on either side of the river were closer to each other than to other facilities on the same shore [Ptn. App. 59a]). That court noted the crowded bridges, some without sidewalks, and determined it could not subject elementary children to these "hazards." In reversing, the Court of Appeals considered the distances involved [Ptn. App. 59a] and concluded that highway hazards could be minimized by providing pupil transportation [*id.* at 60a]; in any event, the Court held, there were not "specific findings which demonstrate that no other plan affording greater integration is practicable" [*id.* at 59a, citing *Thompson* v. *School Bd. of Newport News*, 465 F.2d 83 (4th Cir. 1972), *cert. denied*, 413 U.S. 920 (1973)], and the case was remanded for further proceedings.

The Court of Appeals' decision is eminently sound. The Board's claim that review here is merited can be made only by totally ignoring this Court's language in *Swann*:

> The district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation and will thus necessarily be concerned with the elimination of one-race schools. No *per se* rule can adequately embrace all the difficulties of reconciling the competing interests involved; but in a system with a history of segregation the need for remedial criteria of sufficient specificity to assure a

> **school authority's compliance with its constitutional duty warrants a presumption against schools that are substantially disproportionate in their racial composition.**

402 U.S., at 26. That is precisely the gravamen of the Court of Appeals' decision.

It is true that the decision below conflicts with the approach of the Sixth Circuit in *Goss* v. *Board of Educ. of Knoxville*, 482 F.2d 1044 (1973). The conflict was noted by petitioners Goss, et al. (represented by some of the same counsel who represent the respondents in *Danville*) in their Petition for Writ of Certiorari (No. 73-661), presently pending before this Court. As noted therein, the Sixth Circuit (like the district court in *Danville*) seems to place little weight upon the language of this Court in *Swann*, quoted above. Its approval of continuing substantial segregation in Knoxville because the district court thought the plaintiffs wanted racial balance, or because of presumed impracticalities, cannot be squared with this Court's controlling decisions. While the disparate approaches of the two Circuits constitutes a situation ripe for correction by this Court's *certiorari* jurisdiction, we submit that the facts and dispositions of the two cases compel the conclusion that the Sixth Circuit's decision is the erroneous one. Full and appropriate relief as well as clarification of the law can be satisfactorily achieved by reviewing *Goss* and denying the writ in this *Danville* case.

CONCLUSION

WHEREFORE, for the foregoing reasons, respondents respectfully pray that the Writ be denied.

Respectfully submitted,

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REPLY BRIEF TO BRIEF IN OPPOSITION TO CERTIORARI

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REASONS FOR GRANTING THE WRIT

In their Brief in Opposition to Certiorari, counsel for the Respondents concede that there is a conflict between Fourth and Sixth Circuits concerning the issue before this Court in this case. However, they urge that certiorari should be granted in *Goss* v. *Board of Education of Knoxville*, 340 F.Supp. 711 (E.D. Tenn. 1972); *aff'd*, Nos. 72-1766, 72-1767 (6th Cir. March 29, 1973); *aff'd in banc*, 482 F.2d

1044 (6th Cir. July 18, 1973); *petition for cert. filed*, No. 73-661 (October 16, 1973) in which some of them are Petitioners' counsel and denied in this case, in which they are Respondents' counsel. Such action by this Court would result in the kind of uneven justice which the certiorari jurisdiction was designed to prevent.

In their Petition for a Writ of Certiorari, Petitioners, The School Board of the City of Danville, pointed out that this case involves an open question of constitutional law under the decision of this Court in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971) and *Keyes* v. *School District No. 1, Denver, Colorado*, ... U.S. ....., 93 S.Ct. 2686 (1973). The evidence in this case is uncontradicted and reveals the effective voluntary desegregation of the Danville system. Counsel would only be repeating the arguments made in the Petition if they restated their position with respect to the seriousness of the constitutional question involved in this case.

The Respondents having admitted the conflict and that the issue is ripe for decision, the Petitioners respectfully request that the Petition for Certiorari be granted.

Respectfully submitted.

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